SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 175

PAUL M. SWEEZY, APPELLANT

vs.

STATE OF NEW HAMPSHIRE BY LOUIS C. WYMAN, ATTORNEY GENERAL

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

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[fol. 1] **IN SUPERIOR COURT OF MERRIMACK COUNTY OF THE STATE OF NEW HAMPSHIRE**

STATE OF NEW HAMPSHIRE by LOUIS C. WYMAN, Attorney General,

vs.

PAUL M. SWEEZY

Bill of Exceptions And Allowance Thereof—
November 19, 1954

Petition by the Attorney General seeking to compel the respondent to answer certain questions in connection with an investigation to determine whether there have been violations of Chapter 193, Laws of 1951, and whether there are subversive persons as defined in said Chapter 193, Laws of 1951, presently located within the State of New Hampshire or be adjudged in contempt of court.

The respondent seasonably excepted to the Court's rulings as follows:

"In the three particular fields of inquiry which the Attorney General went into in his petition and which he went into in the actual transcript, as to the inquiries into the lecture at new Hampshire University, I rule as a matter of law they are relevant under the statute under which the Attorney General is acting. That ruling is based upon the sections in the statute which relate particularly to teaching or advocating Communism; and I rule as a matter of law that on the basis of that the Attorney General is entitled to inquire into the actual content of any lecture given at any school. That ruling, as are the other rulings in the case, is not based upon any evidence which has been presented. However, my findings of fact and rulings of law are based upon my consideration of the entire argument of counsel and the transcript in both the Daggett cases and the Sweezy cases, which I have read together with the briefs and arguments of counsel.

"The second group of inquiries which relate to the Progressive Party, I also rule as a matter of law are relevant to the inquiry, since under the statute the Attorney Gen-

eral is directed to inquire, as I conceive it, into any Communist infiltration into any political party or organization. And it would appear to me that the Attorney General might have information of particular Communists which [fol. 2] the witness who is testifying would or did not know were Communists but might know they were members of the Progressive Party, which information might not be possessed by the Attorney General, and therefore the information he might obtain from such an inquiry would be helpful to him in his general investigation.

"The third group of inquiries which related to opinion and beliefs, and answers to hypothetical questions, I rule are not relevant to this case and are too remote from the issue to be helpful to the Attorney General in his inquiry.

"The rule of the Lawson case, it appears to me, permits an inquiry of a witness as to whether he is a member of the Communist Party, or a believer in Communism, or a believer in the violent overthrow of the American government. The concept of inquiring into a person's opinions and beliefs is generally contrary to the American concept of life. I feel that it should not be gone into except where the legislature has specifically authorized it. I feel, therefore, that in the particular cases that inquiry into opinions and beliefs, where they are not direct inquiries into a person's belief in Communism or the Communist Party, are too remote to [illegible] inquiry to be relevant to the case."

Respondent seasonably excepted to the refusal of the Court to find and rule as follows:

(1) A proceeding for contempt is a distinct and independent matter and is to be regarded and entitled "as of a criminal character";

(2) The standards of proof required in a proceeding for contempt must adhere to those in criminal cases;

(3) The usual rules of evidence govern proceedings for contempt, except that the accused should not be held to strict or technical rulings;

(4) There is no evidence in this record from which it could be found that any possible answer which could be given to questions concerning the Sweezy lecture would relate to the overthrow of the Government by force and violence;

(5) There is no evidence in this record from which it

could be found that the inquiry into the subject matter of the Sweezy lecture was the kind of subject which, under all the circumstances, could be inquired into under the controlling statutes here;

(6) There is no evidence in this record from which it could be found that the inquiry into the membership of the Progressive Party was the kind of subject which, under all the circumstances, could be inquired into under the controlling statutes here; as requested.

Respondent seasonably excepted to the Court's ordering him to answer certain questions and to its order adjudg- [fol. 3] ing him in contempt for declining so to do.

Wherefore, the respondent files this bill of exceptions, prays that it be allowed; and that all questions raised thereby be transferred to the Supreme Court. The petition, answer, corrected copies of the hearings of January 8, 1954 and June 3, 1954, at which the respondent was a witness, material portions of the record of the hearing before the Superior Court on June 28, 1954 through June 30, 1954, are printed as an appendix. All exhibits are transferred and may be referred to and used before the Supreme Court but need not be printed. Articles and books published by the respondent may properly be referred to in the Supreme Court, provided they have first been made available to petitioner for reasonable opportunity to examine.

Paul M. Sweezy, By His Attorneys, Sheehan, Phinney & Bass, By: William L. Phinney.

Allowed Nov. 19, 1954.
Robert F. Griffith, Presiding Justice.

In Superior Court of Merrimack County

Petition — June 11, 1954

Comes now Louis C. Wyman, Attorney General of The State of New Hampshire and respectfully represents:

1. That by provision of chapter 307, Laws of 1953, as said Attorney General your petitioner was directed by the Legislature of this State to investigate and report on sub-

versive activities and the presence of subversive persons within The State of New Hampshire, and that the conduct of this investigation and the proceedings thereunder have been delegated to petitioner by the Legislature of this State.

2. That pursuant to this authority and directive from the Legislature of this State, your petitioner issued a lawful subpoena *duces tecum* to Paul M. Sweezy of Wilton, New Hampshire on October 5, 1953, which subpoena was duly served in hand upon respondent by Stuart W. Conner, Special Assistant to the Attorney General, at Wilton, New Hampshire, on October 6, 1953, and that said subpoena directed the presence of Paul M. Sweezy at Room 314, [fol. 4] State House, Concord, New Hampshire at 10:00 A. M. on Friday, January 8, 1954; and that pursuant to said subpoena, Paul M. Sweezy then appeared and gave testimony, without counsel.

3. That on June 3, 1954 in view of certain interim developments additional testimony was taken from respondent, who was accompanied by counsel on that date, and respondent declined to answer for reasons stated certain relevant questions in part as follows:

(Questioning by Attorney General)

". . . Q. Was she (Nancy Sweezy) active in the formation of the Progressive Citizens of America, working with individuals who were then members of the Communist Party?

Counsel (William L. Phinney, Esq.): To that I object.

A. This is a question which I think is irrelevant to the inquiry, and I decline to answer.

Q. You decline to answer on the ground of irrelevancy?

A. Yes. * * *

Q. Was Charles Beebe active in forming the Progressive Citizens of America?

Counsel: Object.

A. This comes under the category of irrelevant questions.

Q. Do I understand you decline to answer on grounds of irrelevance?

A. Yes.

Q. Did he work with your present wife—Did Charles Beebe work with your present wife in 1947?

Counsel: Object.

Q. Was he then a member of the Communist Party?

A. Mr. Wyman, I told you that I didn't know any members of the Communist Party then or later. * * *

". . . Q. Mr. Sweezy, where and when did you first know Abraham Walenko?

A. I think it was in Manchester in 1948 sometime.

Q. You don't remember just where you first met him?

A. No.

Q. Have you been to his house in Weare?

A. Yes.

Q. When did you go to his house in Weare?

A. During 1948.

Q. Did it have anything to do with the Communist Party?

A. No.

Q. Did it have anything to do with the Progressive Party?

Counsel: Objection.

A. Decline to answer.

Q. On the ground of irrelevancy?

A. Yes. * * *

Q. Now Mr. Sweezy, did you give a lecture at the University of New Hampshire Monday, March 22, 1954?

A. Yes.

Q. What was the subject of your lecture?

Counsel: Object.

A. I would like to say one thing in this connection, Mr. Wyman. I stated under oath at my last appearance that, and I now repeat it, that I do not advocate or in any way further the aim of overthrowing constitutional government by force and violence. I did not so advocate in the lecture I gave at the University of New Hampshire. In fact I have never at any time so advocated in a lecture anywhere. Aside from that I have nothing I want to say [fol. 5] about the lecture in question . . . On the grounds that it is totally outside the scope of your inquiry, and that it is an invasion of constitutional rights of free speech guaranteed under the First Amendment.

Q. What was the subject of your lecture?

A. I decline to answer for reasons just given. * * *

Q. In the pamphlet 'Principles of Communism by Friedrich Engels, A New Translation by Paul M. Sweezy' Published by Monthly Review, 66 Barrow Street, New York 14, New York, 1952, Monthly Review Pamphlet Series No. 4, Single Copy 25 cents, 5 copies for $1.00, 30 copies for $5.00 at page 3 in the Introduction, 'Engels shows a master's touch in focusing the reader's attention and in getting across the central message of a new society in the making. This is no scholarly tract; it selects, emphasizes, exaggerates. As such it is as fresh and relevant today as it was more than a hundred years ago. The revolutions of 1848 proved abortive, and the greatest period of capitalist expansion was still in the future. Much that Engels wrote at that time was inevitably premature. But this only means that it is all the more relevant for us at a time when the tide of world revolution has already swirled over a large part of the earth and is daily rising higher despite the frantic commands of our twentieth-century Canutes' Mr. Sweezy, you further talked in terms specifically of whether the peaceful abolition of private property will be possible by referring to Question 16, and in Question 16 at page 13 of this pamphlet the following appears: 'Question. Will the peaceful abolition of private property be possible? Answer. It would be desirable if this could happen, and the communists would certainly be the last to oppose it. Communists know only too well that all conspiracies are not only useless but even harmful. They know all too well that revolutions are not made intentionally and arbitrarily, but that everywhere and always they have been the necessary consequence of conditions which were wholly independent of the will and direction of individual parties and entire classes. But they also see that the development of the proletariat in nearly all civilized countries has been violently suppressed, and that in this way the opponents of communism have been working toward a revolution with all their strength. If the oppressed proletariat is finally driven to revolution, then we communists will defend the interests of the proletarians with deeds as we now defend them with words.' By that question and that answer in your translation did you mean to imply directly or indirectly that if the oppressed proletariat is finally driven

to revolution thereby, that the interest of the proletariat would be defended with deeds as now with words?

"A. By chance I simply meant to present the ideas Engels put forward. You can interpret it as you like.

Q. 'You can interpret it as you like' is that all? Is this again in this section as close to a literal translation as is possible?

[fol. 6] A. Well, I wouldn't say—I don't want to claim to be a historic translator. I think it is a literal translation.

Q. Do you believe in the answer to Question 16, Mr. Sweezy?

Counsel: Objection.

A. I don't think that a question of belief is relevant to this inquiry.

Q. Do you decline to answer?

A. Yes.

Q. On what grounds?

A. Grounds of irrelevance. • • •

Q. Do you believe in the negative theory of revolution as set forth in the answer to Question 16?

Counsel: For the record, objection on the grounds that the witness is being asked whether he believes in certain questions and answers given by Friedrich Engels some hundred years ago.

Q. Well, first, do I understand that you decline to answer?

A. Yes.

Q. For the reason that it is not relevant?

A. And is an invasion of the First Amendment rights.

Q. And now; do you believe in communism?

Counsel: Object for the same reason. He can answer if he wants to. I will instruct him not to answer for the same reasons, that what he believes or what he doesn't believe is a privilege which I believe still exists under the United States Constitution, at any rate, which, since 1920, does have some application over state actions.

A. I decline to answer on advice of counsel for reasons stated.

Q. By counsel?

A. Yes.

Q. And not on any constitutional privilege against self-incrimination?

A. No. Let the record show again that I have never at any time claimed any privilege against self-incrimination. * * *

Q. This is following, now, the question which you originally declined to answer on advice of counsel. Have you ever made the statement to anybody that you believed in communism?

Counsel: Object again for the same reason.

A. Decline to answer for the same reasons. * * *

Q. Didn't you tell the class at the University of New Hampshire on Monday, March 22, 1954, that Socialism was inevitable in this country?

A. I decline to answer any question about the content of my lecture at the University of New Hampshire.

Q. What grounds?

A. Grounds that it is irrelevant to the scope of your inquiry and an invasion of First Amendment rights. * * *

Q. . . . I wish to know if you are a Marxist?

A. I consider myself a Marxist, yes. * * *

Q. Did you tell the class at the University of New Hampshire that Socialism was inevitable?

A. Refuse——

Counsel (interposing): Objection for the same reason stated for the same question before.

A. Refuse to answer on the grounds stated. * * *

Q. Was Charles Beelo active in the Progressive Party in New Hampshire?

Counsel: I think an objection should be taken to that on the grounds that the Progressive Party is a legally organized party with presumably a large membership, and an answer to it calls for something beyond the scope of the inquiry.

[fol. 7] A. I decline to answer on the grounds of irrelevance. * * *

Q. Would you care to tell me what the content of the lectures was which you gave in 1951 and 1952?

A. No, I would not care to.

Q. Did you advocate Marxism at that time?

A. I decline to discuss the contents of the lectures.

Q. Did you advocate Communism at that time?

A. No. No. I didn't. * * *

Q. Did you express the opinion, or did you make the statement at that time that Socialism was inevitable in America?

Counsel: Objection.

A. Aside from saying I did not advocate overthrow of the government by force and violence or any subversive doctrines as defined in New Hampshire legislation, I decline to discuss the contents.

Q. Did you in this last lecture on March 22 or in any of the former lectures espouse the theory of dialectical materialism?

A. Decline to answer on the grounds stated.

Q. Is not dialectical materialism atheistic?

A. No, it isn't.

Q. In what respects is the dialectically materialistic aspect of the evolution of society consistent with belief in God?

A. I am perfectly willing to discuss these philosophies, these philosophical questions——

Q. (interposing) It is not philosophical. It is directly related to what has been taught to students at a State-supported University. It is only for that——

A. (interposing) Do you ascertain that I did teach dialectical materialism?

Q. I have asked you, and you declined to answer.

A. Now you are saying that you are discussing this in reference to what has been taught. * * *

Q. . . . What I mean is simply to inquire of this witness, first, the answer to that question in view of his declination to answer whether or not he espoused the theory of dialectical materialism to a class at the University of New Hampshire. He declined to answer that question. I submit—although I am by no means an authority on the subject nor as well informed as this witness—that dialectical materialism is the materialistic concept of the universe. It is entirely consistent with the Communist theory and inconsistent with a belief and design in an omnipotent God.

A. As I said earlier, I am perfectly willing to discuss this as a matter of philosophy and theology, which I don't proclaim myself as an expert; but I am not going to dis-

cuss it if the implication is that this is what I taught at the University.

Q. I have in the file here a statement from a person who attended your class, and I will read it in part because I don't want you to think I am just fishing. 'His talk this time was on the inevitability of the Socialist program. It was glossed-over interpretation of the materialist dialectic.' Now, again I ask you the original question.

Counsel: In view of the statement read in the record, I would object and instruct the witness not to answer on the basis of the fact that the lecture is not within the scope of this inquiry for reasons of pertinency as well as for constitutional reasons.

[fol. 8] A. I decline to answer for the reasons stated by counsel. * * *

4. That the Legislature of The State of New Hampshire is not presently in session, and under the provisions of chapter 307, Laws of 1953, petitioner has no power to punish for contempt but must refer this witness to the Superior Court pursuant to the provisions of Revised Laws of New Hampshire (1942), chapter 370, sections 17 and 18.

5. That transcripts in full of the proceedings on January 8, 1954 and June 3, 1954 are available to the Court and will be furnished if and as desired, and that, as contained therein and more particularly as set out in part in the foregoing contents of this petition, respondent's refusal to answer relevant questions, not resting upon a claim of the privilege against self-incrimination, is without legal foundation.

6. That respondent has available to him his protection of the constitutional privilege against self-incrimination if he desires to invoke it pursuant to Part First, Art. 15 of the New Hampshire State Constitution, but that beyond said protection respondent in the State investigation is obliged to answer all relevant questions.

7. That to establish whether teaching in this State has been objective presentation of fact or slanted advocacy of subversive doctrine advocating directly or indirectly the overthrow of the government of this State and nation by force and violence, or a course of action which directly or indirectly leads to ultimate revolution of the so-called

"proletariat", is clearly relevant to the present legislative inquiry.

8. That the extent of infiltration by communists or former communists in the origin, formation and policies of the Progressive Party is relevant in aid of findings of fact bearing upon possible legislative consideration of proposals of law affecting that Party, if any.

Wherefore, petitioner prays:

I. That pursuant to the provisions of Revised Laws of New Hampshire (1942), chapter 370, section 18, this Honorable Court shall proceed in this matter as though the proceedings had been originally commenced in this Court;

II. That these same questions be propounded to this witness and in the event this witness persists in the same answer that he be adjudged in contempt of this Honorable Court and that this Court make such orders in the premises as justice requires;

III. That in the event respondent elects to proceed to answer the questions put, that this Honorable Court direct respondent to appear before petitioner in private session to resume further questioning in this matter as may be necessary and proper in the investigation of subversive activities and subversive persons within The State of New Hampshire.

[fol. 9] Respectfully submitted, (S.) Louis C. Wyman, Attorney General.

June 14, 1954.

IN SUPERIOR COURT OF MERRIMACK COUNTY

ANSWER

Paul M. Sweezy, in answer to the above entitled petition, states as follows:

1. He admits that, pursuant to the Laws of 1953, Chap. 307, the Attorney General was authorized to conduct a certain investigation, but alleges that said Chapter limits the investigation of the Attorney General to the determination of (1) whether there have been violations of Chap. 193,

Laws of 1951, and (2) whether there are subversive persons as defined in said Chap. 193, Laws of 1951, presently located within the State of New Hampshire.

2. He admits the allegations in paragraph 2 of the petition.

3. He neither admits nor denies "certain interim developments" as alleged in paragraph 3 of the petition, but leaves the petitioner to his proof. He admits that on June 3, 1954 he appeared before the Attorney General and his entire staff accompanied by his own counsel, admits that he was interrogated by the Attorney General and members of his staff for approximately three hours, admits that he declined to answer certain questions, some of which are set forth in the petition, but denies that the questions which he declined to answer were either relevant to the investigation authorized by the Legislature or that petitioner had any right to ask them.

4. He admits the allegations in paragraph 4 of the petition.

5. He neither admits nor denies that transcripts in full of the proceedings of January 8, 1954 and June 3, 1954 are available to the Court, as alleged in paragraph 5 of the petition, but states that justice requires that said tran- [fol. 10] scripts in full, together with corrections of the many errors therein, which corrections were supplied to the petitioner January 17, 1954 and June 11, 1954, be filed with the Court forthwith. In further answer to the allegations of paragraph 5 of the petition, respondent denies that he has refused to answer questions relevant to the scope of the authorized investigation, alleges that he has answered all questions which are relevant to the authorized investigation, as well as many questions which are not. He further affirmatively states that he has never claimed any privilege against self-incrimination and does not so do now. He denies that his refusal to answer questions is without legal foundation.

6. With regard to the allegations of paragraph 6 of the petition, respondent states that he is not, and has not been, guilty of any conduct which is criminal or contrary to the statutes of the State of New Hampshire or the United States of America, and therefore does not choose to claim

any privilege which may be available to him under the 15th Article of the Constitution of the State of New Hampshire or the 5th Amendment to the Constitution of the United States of America. He denies that he is obliged to answer all questions which the petitioner asserts are relevant, but states he is required to answer only those questions which are clearly relevant, pertinent and material to and within the scope of said authorized investigation, which investigation is subject to and controlled and circumscribed by the Constitution of the State of New Hampshire and the Constitution of the United States of America.

7. With regard to the allegations of paragraph 7 of the petition, respondent denies that he has at any time, by any means or methods, including teaching or lecturing, directly or indirectly, advocated the overthrow of constitutional government by force and violence, as an examination of the transcript of the entire proceedings involving him readily discloses. He further denies that petitioner is either authorized or qualified to pass upon the nature of teaching in this state.

8. With regard to the allegations of paragraph 8 of the petition, respondent denies that he knows or has known as a Communist or as a subversive person, as defined in said Chap. 193, any individual within the State of New Hampshire, as the transcripts of the proceedings concerning him clearly show. He asserts that the Progressive party was a lawful political organization which functioned at all times within this state in a lawful and constitutional manner while respondent had knowledge of it. He states that he will answer relevant questions concerning the activities of any person known to him, if the petitioner will identify and state that such person is a subversive or a Communist as defined in said Chap. 193. He denies that any question of any other nature concerning the origin, forma- [fol. 11] tion and policies of the Progressive party is or can be relevant to said authorized investigation, and further states that inquiries of the petitioner concerning the origin, formation and policies of the Progressive party constitute a flagrant effort on the part of the petitioner to flout the provisions of the Constitution of the State of New Hampshire and the Constitution of the United States of America.

And answering further to the petition, the respondent states:

4. That he has testified under oath in answer to the petitioner's questions as follows:

(1) That he is not now and never has been a member of the Communist party, and that he has never attended any meetings of the Communist party within or without the State of New Hampshire. (January 8 tr., page 8.)

(2) That he recognizes and accepts as a law-abiding citizen the fact that the Legislature of the State of New Hampshire authorized the petitioner "to make a full and complete investigation with respect to violations of the Subversive Activities Act of 1951" and "to determine whether subversive persons as defined in said Act are presently located within the State", and has testified that he has absolutely no knowledge of any violations of any of the provisions of said Act, and no knowledge of subversive persons as defined in said Act being presently located within the state.

(3) Without conceding, and in fact expressly denying, petitioner's right to ask them, respondent has nevertheless answered under oath many questions concerning himself and his activities, in many instances when questions had no apparent relevance to said authorized investigation and encroached upon constitutional guarantees of freedom of speech and association.

(4) Respondent is an economist, teacher and writer who is and has been a socialist for many years. He has advocated socialism for many years, (January 8 tr., page 35) and asserts that he is legally entitled so to do. The socialism which respondent advocates is public ownership of the means of production (January 8 tr., page 37). It does not involve the use of force and violence (January 8 tr., page 37). The type of socialism respondent advocates is not in effect in Russia (January 8 tr., page 38). There would be private ownership of property, and a peaceful transition from a capitalist economy would be possible. Respondent favors compensation for all privately owned means of production (June 3 tr., page 73). Respondent not only doesn't advocate force and violence to effect a transition from a

capitalist economy to a socialist economy, but he deprecates it (June 3 tr., page 75). Respondent believes that it is possible to achieve socialism constitutionally and with a preservation of traditional civil liberties. June 3 tr., page [fol. 12] 30.)

B. That the petitioner abuses his authority to conduct the investigation in a patent effort to control the thoughts, ideas, philosophies and associations of the respondent which said Chap. 307 clearly does not authorize, and which the First and Fourteenth Amendments to the Constitution of the United States of America prohibit.

C. (1) The petitioner has consistently attempted to prejudice the rights of the respondent as a loyal citizen of this state and country, as an examination of the transcripts of the proceedings concerning him reveals, by asking questions based on excerpts from writings of respondent lifted out of context, by deliberate and demonstrable misquotation of sources, and by including among questions which the respondent declined to answer a question which he *did* answer, solely because the *petitioner* believes the answer to be prejudicial to the respondent.

(2) In a further effort to impair the respondent's constitutional rights, and to prejudice respondent by creating the impression that respondent is not a loyal citizen of this state and country, the petitioner in a clear and contemptuous violation of the limitations placed upon his conduct by the Supreme Court of the State of New Hampshire (*Nelson v. Wyman*, 98 N. H. decided April 30, 1954) made available and caused to be published in the press of this state (Union-Leader, State Edition, June 2, 1954) the following: "He (Sweezy) is a man who believes there is a great deal of misunderstanding about communism and that there are many wholly sincere and admirable people who are Communists". As the petitioner well knows, this is but a small portion of the complete answer to petitioner's question, and completely omits the repeated testimony of respondent under oath that he is not and never has been subversive within the meaning of said 1951 Act, and that at no time in any manner has he advocated the overthrow of constitutional government by force and violence, and that he has

no knowledge of subversives within the state as defined by said 1951 Act. The Supreme Court of New Hampshire (*Nelson* v. *Wyman* supra) stated: "The granted power to publish testimony in any case is not absolute or to be exercised indiscriminately; but where accomplishment of the public purpose outweighs the harm to the individual, exercise of the power is lawful. . . . Only to the extent that such publication would be reasonably likely to produce further *subject matter on the investigation* is the Attorney General authorized to publish. If publishing information that a witness has claimed the privilege against self-incrimination may reasonably be thought likely to produce this result, the power *may* be exercised; but discretion must be exercised with reference to the circumstances of the individual case and not by predetermined rule." As the transcripts concerning him clearly show, respondent has never exer- [fol. 13] cised nor claimed the privilege against self-incrimination. There has been and there can be no finding by the Attorney General that the publication of a small part of one answer of respondent plucked from the body of two interrogations can be reasonably likely to produce further information on the subject matter of the investigation.

Respondent asserts that the petitioner, by his wilful disregard for the law of New Hampshire as set forth in *Wyman* v. *Nelson* supra, not only attempts to deprive respondent of fundamental rights guaranteed him by the Constitutions of the State of New Hampshire and the United States of America, but by said disregard deprives himself of any right to petition this Court that the respondent be cited for contempt.

(3) The respondent, further answering, states that he is willing to discuss his beliefs, his economic theories, his philosophies and his writings on any subject in public or in private, and again states that his beliefs, economic theories, philosophies and writings are not and never have been subversive as defined in said 1951 Act. He denies that petitioner has any authority under said Chap. 307 to compel him to discuss his beliefs, economic theories, philosophies and writings in the absence of a clear showing by the petitioner of a factual relationship between

questions sought to be asked and the subversive activities he is authorized to investigate. The petition alleges no such relationship, and the petitioner has made no offer to prove such relationship.

D. If the Court should find that the answers to questions asked and refused as set forth in the petition are relevant to said authorized investigation, then the questions violate respondent's rights as established under the First and Fourteenth Amendments to the Constitution of the United States of America, and the inquiries thereby made are unconstitutional and void.

Wherefore, the respondent prays:

I. That these proceedings be dismissed;

II. That the petitioner be ordered and enjoined from inquiring further into the matters raised by his petition;

III. That the petitioner be ordered and directed to limit his inquiry to questions and subjects directly related to the scope of the investigation authorized by the Legislature, that is (1) whether there have been violations of Chap. 193, Laws of 1951, and (2) whether there are subversive persons as defined in said Chap. 193 presently located within the State of New Hampshire;

IV. That the Court make such orders and decrees as it deems appropriate to enjoin the petitioner and his staff from misusing information received by him and his staff during the course of said authorized investigation in con-
[fol. 14] travention of the opinion of the Supreme Court of the State of New Hampshire as set forth in *Nelson* v. *Wyman* supra;

V. That the Court find and rule that the respondent has cooperated fully in the premises, and that the respondent has answered all questions which the petitioner is authorized or has any right to ask;

VI. That the respondent be discharged from subpoena.

Respectfully submitted, Paul M. Sweezy, By Sheehan, Phinney & Bass, His Attorneys, By W. L. Phinney.

Hearings Conducted Pursuant to Laws of 1953, Chapter 307

State House, Concord, New Hampshire, January 8, 1954.

PAUL M. SWEEZY the witness, being first duly sworn by Mr. Wyman, was examined and testified as follows:

Mr. Wyman: What is your name?

Mr. Sweezy: My name is Paul M. Sweezy.

Before you go any further, can I ask to have permission to read a statement in the record?

Mr. Wyman: You may have permission to make any statement you care to make, and to have it incorporated as a part of the record, at any time in this proceeding.

But before we get into that, may I ask you simply whether you received a copy of the Rules of Procedure and a copy of the other materials on the law and——

Mr. Sweezy: (Interposing) Yes.

Mr. Wyman: You did?

Mr. Sweezy: Yes.

Mr. Wyman: And you know that if you wish to be represented here by a lawyer or have a lawyer with you, you are entitled to have one?

[fol. 15] Mr. Sweezy: I have a lawyer, but he had a prior engagement this morning and couldn't come with me. He had another hearing here in the State House.

Mr. Wyman: Do you want to go on here without your lawyer, or do you want to have your lawyer here and conduct this hearing later on today?

Mr. Sweezy: I think I'd just as soon go on with it.

Mr. Wyman: All right. Do you want to make a statement?

Mr. Sweezy: I would like to, because it would explain, I think, something that——

Mr. Wyman: (Interposing) You go right ahead. Do you want to read the statement or have it marked?

Mr. Sweezy: I'd like you to hear it.

Mr. Wyman: Go ahead.

(Refer to appendix A for statement as read by Mr. Sweezy.)

Mr. Wyman: That may be marked and included as part of the transcript.

Mr. Sweezy, where do you live?

Mr. Sweezy: Wilton.

Mr. Wyman: Where abouts in Wilton?

Mr. Sweezy: Well, it hasn't got a name. It is a farm house about two miles out of Town.

Mr. Wyman: Are you married?

Mr. Sweezy: Yes.

Mr. Wyman: What is your wife's name?

Mr. Sweezy: I really don't see what it has to do with the—Nancy Adams Sweezy.

Mr. Wyman: How long have you lived in New Hampshire?

Mr. Sweezy: On and off—that is, summers—since I was six years old.

Mr. Wyman: Well, summers in the last, let's say, eight years?

Mr. Sweezy: How long a resident?

Mr. Wyman: Yes.

Mr. Sweezy: Since the war.

Mr. Wyman: Since World War II?

Mr. Sweezy: That's right. I lived in Massachusetts up to the time I went into the Army.

Mr. Wyman: How many times have you been married?

Mr. Sweezy: Twice.

Mr. Wyman: What was the name of your first wife?

Mr. Sweezy: Maxine Yaple.

Mr. Wyman: Did you have any children by Maxine?

Mr. Sweezy: No.

[fol. 16] Mr. Wyman: Do you have any children at the present time?

Mr. Sweezy: Yes, three.

Mr. Wyman: Three?

Mr. Sweezy: Yes.

Mr. Wyman: Do you know where Maxine is now?

Mr. Sweezy: Somewhere down near Philadelphia, but I don't have her address.

Mr. Wyman: When did you marry Nancy?

Mr. Sweezy: In 1945.

Mr. Wyman: In New Hampshire?

Mr. Sweezy: Yes.

Mr. Wyman: Did you attend undergraduate school?

Mr. Sweezy: Yes.

Mr. Wyman: What is your educational background?

Mr. Sweezy: Exeter, Harvard, B. A. 1931, Ph. D. 1937, and student a year at the London School of Economics, also University of Vienna.

Mr. Wyman: Did you, subsequent to completion of your academic work, have occasion to teach?

Mr. Sweezy: Yes.

Mr. Wyman: Where?

Mr. Sweezy: Harvard, eight years, 1934 to 1942.

Mr. Wyman: Where did you go in 1942?

Mr. Sweezy: Went into the Army.

Mr. Wyman: Is that the reason that you left Harvard?

Mr. Sweezy: Yes.

Mr. Wyman: And what was your military service?

Mr. Sweezy: Well, how do you interpret that?

Mr. Wyman: When did you go in the Army? What did you do?

Mr. Sweezy: I went in the Army in December of 1942, and most of the time I was in the Office of Strategic Services. I spent a good part of the war in London and finally ended up in Berlin in the summer of 1945.

Mr. Wyman: Who was your immediate commanding officer in OSS?

Mr. Sweezy: Many of them.

Mr. Wyman: Many of them?

Mr. Sweezy: Yes.

Mr. Wyman: You remember none of them?

Mr. Sweezy: You mean in the military sense?

Mr. Wyman: Yes.

Mr. Sweezy: I couldn't tell you who the commanding officers were. There was a funny system. I mean the Army people were assigned to the OSS; and, of course, they did [fol. 17] have some military commander attached to them, but that was not part of the work.

Mr. Wyman: Were you in uniform?

Mr. Sweezy: Not in London, no.

Mr. Wyman: Did you have a rank?

Mr. Sweezy: I had a number of ranks. I finished up as Second Lieutenant.

Mr. Wyman: Was it part of your work in OSS to have your rank vary as the occasion of your work required?

Mr. Sweezy: No.

Mr. Wyman: When did you end your military service?

Mr. Sweezy: I think it was toward the end of 1945. I am sure it was.

Mr. Wyman: At that time you were Second Lieutenant?

Mr. Sweezy: Yes.

Mr. Wyman: What did you do then?

Mr. Sweezy: Came up here and started—Well, the first year I had what you call a social science research—some sort of a grant they gave to people who were just coming out of military service and wanted an opportunity to catch up.

Mr. Wyman: Like the GI Biill?

Mr. Sweezy: No. It was given by the Social Science Research Council which is a scholarly academic organization that gives grants to people for various types of research and they had this—I can't remember the exact title—they had this system of scholarships that quite a few people took.

Mr. Wyman: What did you do after 1945, after this period of research?

Mr. Sweezy: Researching and writing ever since.

Mr. Wyman: At Wilton?

Mr. Sweezy: Yes.

Mr. Wyman: Entirely aside from any question of being here under subpoena, and purely as a voluntary matter, and without any element of compulsion whatever, are you willing to co-operate with me in endeavoring to locate such members of, present or past, of Communist Party as may be in the State of New Hampshire at the present time?

Mr. Sweezy: I don't know any.

Mr. Wyman: You don't know any?

Mr. Sweezy: No.

Mr. Wyman: You mean you don't know that there are any members of the Communist Party in the State of New Hampshire at the present time?

Mr. Sweezy: I don't say I don't know there are none. I [fol. 18] don't know any.

Mr. Wyman: You don't personally know it?

Mr. Sweezy: I might meet somebody on the street, but I don't know of my own knowledge that he or she is.

Mr. Wyman: Do you know Elba Chase Nelson?

Mr. Sweezy: Yes. I met her a couple of times.

Mr. Wyman: She is in the State at the present time?

Mr. Sweezy: If you say so, I will take your word for it. I read in the papers that you had an encounter with her recently.

Mr. Wyman: Did you not, at least at one time in the past, know her as a member of the Communist Party?

Mr. Sweezy: Never.

Mr. Wyman: Never?

Mr. Sweezy: Never did.

Mr. Wyman: Was her general reputation as being a leader of the Communist Party?

Mr. Sweezy: I don't think I am required to testify about general reputations.

Mr. Wyman: Do you now state that Mrs. Nelson never indicated to you at any time that she was a member of the Communist Party?

Mr. Sweezy: I say that.

Mr. Wyman: You do?

Mr. Sweezy: Yes.

Mr. Wyman: Are you a member of the Communist Party?

Mr. Sweezy: No.

Mr. Wyman: Have you ever been?

Mr. Sweezy: No.

Mr. Wyman: Have you ever attended any meetings of the Communist Party in the State of New Hampshire?

Mr. Sweezy: No, nowhere.

Mr. Wyman: Nowhere?

Mr. Sweezy: Nowhere.

Mr. Wyman: Have you ever attended any meetings which you knew to be also attended by members of the Communist Party in New Hampshire?

Mr. Sweezy: No.

Mr. Wyman: Do you know Professor Daggett at the University of New Hampshire?

Mr. Sweezy: I don't see the relevance of this. I have known a lot of people in New Hampshire under perfectly

legitimate circumstances, and this is precisely the kind of question that I am going to decline to answer on the ground that I stated in my original statement.

[fol. 19] Mr. Wyman: Well, we have a long way to go here today. Do I understand you decline to answer the question, "Do you know Professor Daggett at the University of New Hampshire"?

Mr. Sweezy: I don't see the relevance of the question. Perhaps you can enlighten me?

Mr. Wyman: I am sorry. I believe I am asking the questions.

Mr. Sweezy: I agree. I just said if you want to try to enlighten me, perhaps you could do so; but I don't see any relevance of that question.

Mr. Wyman: Since the record may or may not become public, and since we have the duty and are careful to delete anything in the record which may adversely affect the reputation of anyone unjustifiably, we have information that Professor Daggett has been active knowingly on behalf of not less than four organizations listed by the National Attorney General in the effect that they seek to overthrow the United States by force and violence.

Mr. Sweezy: Can you tell me where the Attorney General's list says that?

Mr. Wyman: I think we will cover that. What I want to know is whether or not you have attended any meetings in the State of New Hampshire also attended by Professor Daggett?

Mr. Sweezy: I decline to answer on the stated grounds. Do you want the grounds?

Mr. Wyman: Yes.

Mr. Sweezy: This is not pertinent under the subject of inquiry and an invasion of the political freedoms which are guaranteed by the first amendment and various articles of the New Hampshire Constitution, but pertinency is my main contention.

Mr. Wyman: You do not claim privilege against self incrimination?

Mr. Sweezy: No.

Mr. Wyman: You do not rely upon that?

Mr. Sweezy: No.

Mr. Wyman: Appended to your subpoena were a list of organizations?

Mr. Sweezy: Yes.

Mr. Wyman: These organizations have been designated by the National Attorney General as subversive.

Mr. Sweezy: In what sense?

Mr. Wyman: That I can't say.

Mr. Sweezy: I can—for security.

Mr. Wyman: You go ahead.

Mr. Sweezy: For security of Federal employees. This [fol. 20] was the original purpose of the list. I believe you will find nowhere any claim that all of these are subversive in the narrowly defined sense of the New Hampshire Act.

Mr. Wyman: Then according to your statement, membership in or affiliation with these organizations could not possibly be incriminating?

Mr. Sweezy: I agree. I am not claiming anything about incrimination. I made that clear, didn't I?

Mr. Wyman: I believe you have.

I ask you, are you presently a member of any of these organizations?

Mr. Sweezy: No.

Mr. Wyman: Are you presently affiliated with any of these organizations?

Mr. Sweezy: I have been. I know I have looked the list over. I know I was a member of the American League against War and Fascism.

Mr. Wyman: Was Stearns Morse of Dartmouth a member of that?

Mr. Sweezy: I have no idea.

Mr. Wyman: Wasn't he chairman of it?

Mr. Sweezy: I wasn't in New Hampshire at the time, except summers. Do you want me to discuss the list and my affiliation or membership in various organizations?

Mr. Wyman: If you feel that you want to. I have asked you the question whether or not you are affiliated, and I say to you that I sometimes myself have difficulty knowing what membership is. So perhaps the word "affiliation" is clearer.

Mr. Sweezy: I don't think so, but have you had anything to do with it——

Mr. Wyman: (Interposing.) All right, supported it?

Mr. Sweezy: I am not claiming incrimination. I am not claiming anything of that sort. I probably have supported or endorsed some of them. The American League was the only one, in looking through the list, I can say definitely I have been a member of. However, I would assume you had done some research on that, haven't you? Maybe you can refresh my memory.

Mr. Wyman: We'll come to that in time. I am not withholding anything. It is just that I want to take these things up in a reasonably orderly manner if I can.

Now, did you personally advocate, or did you personally at any time advocate or teach or otherwise support the overthrow of this State by force and violence?

Mr. Sweezy: No.

[fol. 21] Mr. Wyman: I hope you will take no offense of my asking this question. It is part of the duty passed upon me by the Legislature. Have you ever at any time in the past done that?

Mr. Sweezy: No.

Mr. Wyman: Do you know of any persons in this State who have so advocated?

Mr. Sweezy: No.

Mr. Wyman: At any time in the past?

Mr. Sweezy: No.

Mr. Wyman: Have you ever knowingly assisted persons so advocating or groups so advocating in New Hampshire?

Mr. Sweezy: No. I never knew such a group or person in New Hampshire.

Mr. Wyman: Have you ever at any time passed any information of a classified nature on to either members of the Soviet or members of the Communist Party?

Mr. Sweezy: No.

Mr. Wyman: In 1941, Mr. Sweezy, were you one of the members of the committee sponsoring the Citizens' Committee for Harry Bridges?

Mr. Sweezy: I don't remember.

Mr. Wyman: Did your name appear on the letterhead of either the Citizens' Committee for Harry Bridges or the Citizens' Victory Committee for Harry Bridges?

Mr. Sweezy: I couldn't tell you.

Mr. Wyman: For the record, the Citizens' Committee for Harry Bridges and the Citizens' Victory Committee for Harry Bridges were cited as Communist fronts by the Special Committee on Un-American Activities in Report 1311 in March 1944. The United States Attorney General cited the Citizens' Committee for Harry Bridges as Communist in a letter to the Loyalty Review Board released April 27, 1949; the organization was redesignated by the Attorney General under Executive Order 10450 of April 27, 1953, released by the Department of Justice, April 29, 1953.

As Doctor Paul Sweezy, were you chairman of the Committee in Defense of Carl Marzani?

Mr. Sweezy: I don't know whether I was chairman. I helped in his defense. If you have it, I am not disputing it. I simply don't recall.

Mr. Wyman: Do you remember the booklet entitled "The Case of Carl Marzani"?

Mr. Sweezy: No.

Mr. Wyman: You don't know whether or not on the back of that book your name appeared as chairman of the Committee?

[fol. 22] Mr. Sweezy: No.

Mr. Wyman: If it did so appear, does that refresh your recollection as to whether or not you were chairman?

Mr. Sweezy: I say, I don't dispute it. I don't recall the exact title.

Mr. Wyman: Who was Carl Marzani?

Mr. Sweezy: He was a—Well, the way I happen to know him, he was in the same organization I was during the war.

Mr. Wyman: In OSS?

Mr. Sweezy: Yes. I knew him in the course of official business.

Mr. Wyman: He was convicted on May 22, 1947, and sentenced on June 27, 1947, to serve from one to three years in jail for concealing his Communist affiliations while working for the Federal Government.

Mr. Sweezy: I read that. I think that is right, roughly correct.

Mr. Wyman: Were you in 1949 a sponsor and speaker at the Scientific and Cultural Conference for World Peace

held by the National Council of the Arts, Sciences, and Professions in New York City from March 25 through 27, 1949?

Mr. Sweezy: Yes.

Mr. Wyman: Did you at that time give a speech entitled "The Marshall Plan in Relation to Peace and War"?

Mr. Sweezy: Yes. That has been published and is a matter of public record.

Mr. Wyman: Yes. Did your name appear as a member of the Board of Directors of the National Council of the Arts, Sciences, and Professions on letterheads in 1950 and 1952?

Mr. Sweezy: If you say so, yes.

Mr. Wyman: Were you at that time a member of the Board of Directors of the National Council?

Mr. Sweezy: Called the Board of Directors or National Council, yes. I believe I still am.

Mr. Wyman: And did you in 1950 sign the Council's resolution against atomic weapons?

Mr. Sweezy: That I don't know.

Mr. Wyman: Mind you, in so saying, in am not necessarily implying that such a signature is subversive.

Mr. Sweezy: I understand that, and I just can't tell you. I am against atomic weapons.

Mr. Wyman: The "Daily Worker," issue of March 10, 1952, page 3, indicates you signed a statement protesting curbs on lawyers in political trials. Do you remember now [fol. 23] you signed such a statement?

Mr. Sweezy: I don't remember, no.

Mr. Wyman: Mr. Conner, do you have a background information for the record as to the nature and purposes of the Scientific and Cultural Conference for World Peace?

Mr. Conner: Yes. The Committee on Un-American Activities for the United States House of Representatives, in their report on that Conference, had this to say about it: "The Scientific and Cultural Conference for World Peace, the gathering at the Waldorf-Astoria Hotel in New York City on March 25, 26, and 27, 1949, was actually a supermobilization of the inveterate wheelhorses and supporters of the Communist Party and its auxiliary organizations.

The purposes of the Scientific and Cultural Conference are as follows: To provide a propagandist forum against the Marshall Plan, the North Atlantic Defense Pact, and American foreign policy in general; to promote support for the foreign policy of the Soviet Union; to mobilize American intellectuals in the field of arts, science, and letters behind this program even to the point of civil disobedience against the American Government; to prepare the way for the coming World Peace Congress to be held in Paris on April 20 to 23, 1949, with similar aims in view on a world scale and under similar Communist auspices; and to discredit American culture and to extol the virtues of Soviet culture."

Mr. Sweezy: May I say that I would not accept that as an accurate description. I was at the Conference, and I think it is a wildly inaccurate description.

Mr. Wyman: In 1949 did you send "Greetings from American Sponsors to World Congress for Peace, Paris, April 20-25, 1949"?

Mr. Sweezy: Did that emerge from the Waldorf Conference?

Mr. Wyman: As shown on the official leaflet of the American Sponsoring Committee, World Congress for Peace?

Mr. Sweezy: I don't know.

Mr. Wyman: Do you remember whether or not you knew in 1949 of the meeting of the World Congress for Peace in Paris?

Mr. Sweezy: Certainly. I read about it in the papers.

Mr. Wyman: Did you support the World Peace Congress at that time?

Mr. Sweezy: I support all peace congresses.

Mr. Wyman: Do you know——

Mr. Sweezy: (Interposing) I didn't sponsor it, I don't think. I don't think I had anything official to do with it. I may have, but I am in favor of peace conferences, whoever organizes them.

Mr. Wyman: Did you know at that time, or have you learned subsequently, the World Peace Congress in Paris was cited as a Communist front which "have been organ-

[fol. 24] ized under Communist initiative in various countries throughout the world as part of a campaign against the North Atlantic Defense Pact"?

Mr. Sweezy: I don't know that specific piece of information.

Mr. Wyman: That appeared first in a report of the House Committee on Un-American Activities, Report 1954, April 26, 1950, and also in Report 378, April 25, 1951, page 16.

In 1951 did you sign and insert in the Washington "Evening Star" an open letter to J. Howard McGrath, who was then, or rather on behalf of the four jailed trustees of the Bail Fund of the Civil Rights Congress of New York?

Mr. Sweezy: It is quite likely, but I cannot recall the details.

Mr. Wyman: Do we have a photostatic copy of the letter?

Mr. Conner: We have a photostat of the same letter, I believe, which appeared in the St. Louis "Post Dispatch", I believe.

Mr. Wyman: Will you produce it?

(Photostatic copy of letter produced by Mr. Conner.)

Mr. Wyman: Mr. Sweezy, I show you a letter designated as an open letter to J. Howard McGrath and marked as an advertisement, and there appears printed upon the letter, as a signatory over a caption, that the advertisement was paid for by contributions of signers and listed Paul M. Sweezy, economist in New Hampshire.

Mr. Sweezy: It looks genuine. You have a lot of names here, haven't you?

Mr. Wyman: Do you recall that letter now?

Mr. Sweezy: I don't remember it, but it looks perfectly genuine.

Mr. Wyman: It looks what?

Mr. Sweezy: Perfectly genuine.

Mr. Wyman: Well, do you remember whether or not you did sign such a letter?

Mr. Sweezy: I don't remember it.

Mr. Wyman: That letter was dated October 30, 1951, is that correct, Mr. Conner?

Mr. Conner: This appeared in the St. Louis "Post Dispatch" October 23, 1951.

Mr. Wyman: Do you know that in December of 1947 the Civil Rights Congress was cited as subversive and Communist by the United States Attorney General in letters furnished the Loyalty Review Board and given to the public press in December 1947 and September of 1948.

Mr. Sweezy: I don't know it.

[fol. 25] Mr. Wyman: That the letters were redesignated under Executive Order 10450 of April 27, 1953, released by the Justice Department April 29, 1953, and that the Committee on Un-American Activities, in its Report 1115, on September 2, 1947, cited the Civil Rights Congress as "dedicated not to the broader issues of civil liberties, but specifically to the defense of individual Communists and the Communist Party" and "controlled by individuals who are either members of the Communist Party or openly loyal to it"?

Mr. Sweezy: No, I don't know that.

Mr. Wyman: In 1951 did you sign a petition "to bar military aid to or alliance with fascist Spain" sent to President Truman by the Spanish Refugee Appeal of the Joint Anti-Fascist Refugee Committee?

Mr. Sweezy: I don't remember it, but it expresses my sentiments.

Mr. Wyman: It does at the present time?

Mr. Sweezy: Yes.

Mr. Wyman: In May of 1948 did you sign a statement "How to End the Cold War and Build the Peace," which was released by the National Council of American-Soviet Friendship in praise of Henry Wallace's open letter to Stalin written in May 1948?

Mr. Sweezy: I don't remember it.

Mr. Wyman: Did you know that in March 1944, on March 29 of that year, page 156, the Special Committee on Un-American Activities cited the National Council of American-Soviet Friendship as "the Communist Party's principal front for all things Russian"?

Mr. Sweezy: I am not much of an expert on the Un-American Committee.

Mr. Wyman: And that the United States Attorney General cited the National Council as subversive and Communist in press releases of December 4, 1947, and Sep-

tember 21, 1948; that it was redesignated by the National Attorney General under Executive Order 10450?

Mr. Sweezy: I did not know it.

Mr. Wyman: Did you know that the Special Committee on Un-American Activities cited the Joint Anti-Fascist Refugee Committee as a Communist front on March 29, 1944?

Mr. Sweezy: No.

Mr. Wyman: It was also cited by the United States Attorney General in the same releases and Executive Order just referred to as subversive and Communist?

Mr. Sweezy: No, I didn't.

Mr. Wyman: In March 1937, and of course, this is quite awhile ago, when you were a professor, I believe, at Harvard, did you sign an open letter in defense of the Moscow [fol. 26] purge trials?

Mr. Sweezy: Could I ask a question there? Do you maintain that these matters that happened fifteen, sixteen years ago are relevant to the New Hampshire legislation of 1951?

Mr. Wyman: Yes, I do, for the reason that you have testified here under oath that you are not presently a member of the Communist Party or that you never were a member of the Communist Party, and that you never have been affiliated with the Communist Party directly or indirectly, and that you have never knowingly aided it or aided persons or groups whose purpose was the overthrow of the Government by force and violence. The Communist Party has been so designated by a great number of separate individual bodies and boards, both in the present administration and in prior administrations; and the preamble to the 1951 Act in New Hampshire also, as a legislative finding, so designates it.

These statements and these activities on your part appear at least to raise a question as to whether or not you have in fact in the past acted consistently and repeatedly in support of the Communist Party, its objectives and its movement; and it is for that reason that these questions are asked of you—in an effort to establish whether or not it is more probable than not that your statement is so.

Mr. Sweezy: Would you like to have some statements by Communist Party sources about me?

Mr. Wyman: Maybe we can get into that before we get through. In any event, if you have any statements that you want to incorporate in this record at any time or in any way, you are welcome to do so.

Now, can we get back to this letter written in March 1937 in defense of the Moscow purge trials?

Mr. Sweezy: I don't recall it.

Mr. Wyman: The "Daily Worker" of February 9, 1937, page 2, contains a story reporting that Paul M. Sweezy of Harvard University signed the Open Letter to American Liberals. The same information was shown in "Soviet Russia Today" in its issue of March 1937, pages 14 and 15. The Special Committee on Un-American Activities cited the Open Letter to American Liberals in its report of June 25, 1942, page 21, as follows: "In March 1937 a group of well-known Communists and Communist collaborators published an open letter bearing the title given above. The letter was a defense of the Moscow purge trials."

Do you remember, Mr. Sweezy, whether, as a professor, you spoke at a forum of "Science and Society" held on November 28, 1942, at the Hotel Astor in New York City?

Mr. Sweezy: I happen to remember that, yes.

[fol. 27] Mr. Wyman: And at that time you were identified with Harvard University's Department of Economics. Do you remember the content of that speech?

Mr. Sweezy: I think it had to do with price control.

Mr. Wyman: That is all?

Mr. Sweezy: I think so—rationing and price control. This was a forum, as I remember it, on economic policy during wartime.

Mr. Wyman: In 1948, in the winter issue of "Science and Society," page 65, did you contribute an article entitled "Origins of Present Day Socialism"?

Mr. Sweezy: I didn't contribute that. That was a chapter in my book called "Socialism," which was published by McGraw-Hill in 1949, and the chapter was published in "Science and Society."

Mr. Wyman: Did you know that "Science and Society" had been four years earlier designated and cited as a Com-

munist publication by the Special Committee on Un-American Activities in its report of March 29, 1944, page 96?

Mr. Sweezy: I did not. You should have there that I was one of the original sponsors of "Science and Society."

Mr. Wyman: Is "Science and Society" still published?

Mr. Sweezy: Yes.

Mr. Wyman: Mr. Conner, do you have additional factual data on Doctor Sweezy's contributions to "Science and Society"?

Mr. Conner: Yes. Do you recall being a contributing editor to "Science and Society" in the spring issue of 1938?

Mr. Sweezy: I was on the original group that sponsored it. I don't know what it was called. I wasn't actually an editor of it.

Mr. Conner: You were listed in the 1938 spring issue as a book reviewer; 1940 spring issue as contributing editor; winter 1943 issue as contributor; fall of 1946 issue as contributor; summer of 1947 issue as contributor; fall of 1947 issue as book reviewer; fall of 1948 issue as book reviewer; winter of 1948 issue as contributor; spring of 1950 issue as a contributor.

Do you recall being connected with the magazine up to that time?

Mr. Sweezy: I was never connected with it other than as an original sponsor and then writing for it from time to time.

Mr. Conner: Do you still maintain your relationship with it?

Mr. Sweezy: Well, I write for quite a few different periodicals; and I haven't written anything very recently, but I may. Oh, I have written fairly recently, that is true. There has been a controversy going on in the pages of "Science and Society" to which I have been one of the con- [fol. 28] tributors. It is on the subject of "Decline of Feudalism and the Rise of Capitalism."

Mr. Wyman: Is that all?

Mr. Conner: Yes.

Mr. Wyman: In 1949 on August 21 do you remember signing an open letter to senators and congressmen urging the defeat of President Truman's arms program, released

by the Conference on Peaceful Alternatives to the Atlantic Pact?

Mr. Sweezy: I don't remember it.

Mr. Wyman: Do you have any knowledge concerning the nature and purposes of the Conference on Peaceful Alternatives to the Atlantic Pact?

Mr. Sweezy: My recollection is that it was headed by a University of Chicago theologian, but that may be inaccurate. I remember hearing of the Committee, thinking it was a very good Committee.

Mr. Wyman: Would you——

Mr. Sweezy: (Interposing) It may be still in existence for all I know.

Mr. Wyman: Would you remember whether or not it had ever been cited as having been instigated by Communists in the United States?

Mr. Sweezy: I wouldn't know that.

Mr. Wyman: In the report on the Communist "Peace" Offensive on April 25, 1951, page 56, the Committee on Un-American Activities cited the Committee for Peaceful Alternatives to the Atlantic Pact as an organization formed as a result of the Conference for Peaceful Alternatives to the Atlantic Pact, a meeting called by the "Daily Worker" in July 1949, to be held in Washington, D. C., which was instigated by "Communists in the United States who did their part in the Moscow campaign."

The "Daily Worker" of 1953, February 20 issue, page 6, reported that Professor Sweezy was to speak at a panel on "The Domestic Economy" at the annual convention of the National Lawyers Guild at the Park-Sheraton Hotel, New York City, February 20 to 23. Did you so speak?

Mr. Sweezy: I did, and that speech has been published in my last book.

Mr. Wyman: What is the latest book?

Mr. Sweezy: Called "The Present as History." It was published last month. It is a collection of essays and reviews on Capitalism and Socialism. Be glad to provide you with a copy.

Mr. Wyman: I would be most interested to have a copy for my own information independent of this.

[fol. 29] Did you know in 1953, when you spoke on that

panel, that the National Lawyers Guild had been cited almost ten years earlier as a Communist front by the Special Committee on Un-American Activities?

Mr. Sweezy: No.

Mr. Wyman: It was so cited in Report 1311 of March 29, 1944, page 149.

Did you also know in 1953 that in 1950 the Standing Committee of the House of Representatives on Un-American Activities released a report on the National Lawyers Guild in which it was cited as a Communist front and "the foremost legal bulwark of the Communist Party, its front organizations, and controlled unions" in Report 3123 dated September 21, 1950?

Mr. Sweezy: I didn't know it. I know that the Attorney General recently served notice on the Lawyers Guild that he was going to put their name on the subversive list, and I felt the argument was most remarkable. The reason was that on major items they had not agreed with the Communist Party, and this showed how clever they were in disguising their affiliation with the Communist Party.' Apparently if you agree with the Communist Party or don't agree, they have got you.

Mr. Wyman: Well, you understand, Mr. Sweezy, that I am not here asking you concerning your beliefs or your state of mind or any other personal convictions that you may have as an individual, and any statements that you may make here with respect to your personal state of mind or your personal convictions comes to me entirely voluntarily on your part if at all.

Do you know anything about the nature and development of the Progressive Party in the State of New Hampshire?

Mr. Sweezy: This is one of the questions I am going to decline to answer.

Mr. Wyman: Would you be willing, Mr. Sweezy, to specify the reasons for your refusal to answer?

Mr. Sweezy: Yes, that it couldn't possibly have any pertinence to the subject matter; that my connection with the Progressive Party was in exercise of perfectly legitimate political freedoms; and that to be questioned on a subject like that is a violation of first amendment rights as well as getting outside of the range, the proper range of your inquiry.

Mr. Wyman: Let me, of course, advise you that since you do not elect to claim the privilege, in this legislative investigation, I feel that you are legally required to answer and that the question is quite relevant and quite pertinent to the consideration of what recommendations for legislation need to be made as a result of the investigation at the [fol. 30] end of this year to the next session of the Legislature; and in so stating, I will endeavor to clarify the statement by asking you a little further about the Progressive Party so that you may see what I have in mind and, I hope, understand that it is not purely captious.

Considerable sworn testimony has been given in this investigation to the effect that the Progressive Party in New Hampshire has been heavily infiltrated by members of the Communist Party and that the policies and purposes of the Progressive Party have been directly influenced by members of the Communist Party. Do you have any knowledge of that?

Mr. Sweezy: No.

Mr. Wyman: Do you know, Mr. Sweezy, whether or not Elba Chase Nelson has been active in the Progressive Party in New Hampshire?

Mr. Sweezy: I never had any reason to know that she was.

Mr. Wyman: Haven't you attended meetings of the Progressive Party also attended by Elba Chase Nelson?

Mr. Sweezy: I will answer that, but no more about the Progressive Party. No, I haven't, although I won't say she wasn't at the convention of the Progressive Party which Henry Wallace addressed in 1948.

Mr. Wyman: Is the Progressive Party still in existence in New Hampshire at this time? Do you know?

Mr. Sweezy: I am not going to answer any more questions about the Progressive Party.

Mr. Wyman: In 1947 were you convention chairman of the Progressive Citizens of America, New Hampshire chapter?

Mr. Sweezy: This is part of your previous line of questioning, activities of the Progressive Party, and I maintain this is quite irrelevant to any proper line of questioning under the terms of your mandate from the Legislature.

Mr. Wyman: Let me state that I understand that you refuse to answer?

Mr. Sweezy: Yes.

Mr. Wyman: In 1947 were you State chairman of the Progressive Citizens of America, New Hampshire chapter?

Mr. Sweezy: Same answer.

Mr. Wyman: To wit, that you refuse to answer?

Mr. Sweezy: Yes.

Mr. Wyman: Was the Progressive Citizens of America the predecessor in New Hampshire of the Progressive Party?

Mr. Sweezy: I decline to answer.

Mr. Wyman: In 1948 were you a sponsor of the New Hampshire Progressive Citizens of New Hampshire?

[fol. 31] Mr. Sweezy: Decline to answer.

Mr. Wyman: In 1948, and again I wish to remind you that in some of these questions which have to do with background there is no inference or implication intended that the activity per se is subversive.

Were you a member of the State Executive Committee of the New Hampshire Wallace for President Committee?

Mr. Sweezy: Decline to answer, and I would like to make perfectly clear that I am declining to answer, not because I would have any objection to your having the answer, but in my opinion this is clearly going outside your terms of reference and invading political rights and political privacy, the sort of thing I consider to be essential to constitutional forms of government.

Mr. Wyman: I understand your thinking, Mr. Sweezy, and in fairness to your position may I ask you would your answer be the same if you were shown evidence that the Progressive Party was heavily infiltrated by Communists?

Mr. Sweezy: Yes.

Mr. Wyman: In 1948 were you a member of the Educators for Wallace?

Mr. Sweezy: Let's see, this is the same—I think this comes under the same category as many of the questions I have been answering. I see no harm in answering that. I don't remember it.

Mr. Wyman: In 1948 were you a member of the National Wallace for President Committee?

Mr. Sweezy: Just off the record, what I am trying to do is establish a consistent position.

Mr. Wyman: I understand.

Mr. Sweezy: Yes, I was. I think that is perfectly——

Mr. Wyman: (Interposing) In 1949 were you a sponsor of a dinner for Henry Wallace given September 12, 1949?

Mr. Sweezy: That I don't remember.

Mr. Wyman: In 1952 were you a candidate for Presidential Elector on the Progressive Party ticket in New Hampshire?

Mr. Sweezy: Yes, and I will remind you that I also signed under oath a statement that I was not a subversive person within the meaning of the Act of 1951.

Mr. Wyman: I understand that, sir, and I would also state to you that it is perfectly obvious that a good many members of the Progressive Party are completely loyal individuals.

Did you recently participate in a meeting in New York City held for the purpose of raising funds for Dirk Struik?

Mr. Sweezy: Well, I don't know if it was recently—a couple of years ago, I guess.

[fol. 32] Mr. Wyman: What did you do at that meeting?

Mr. Sweezy: I spoke, I think.

Mr. Wyman: What purpose was Professor Struik raising money for?

Mr. Sweezy: Legal defense.

Mr. Wyman: What was the charge against him?

Mr. Sweezy: I don't know the exact charge. I always considered it absurd.

Mr. Wyman: What have your associations been with Professor Struik?

Mr. Sweezy: Oh, I knew him when I was teaching at Harvard. He was teaching at M. I. T.

Mr. Wyman: Did you see him very often?

Mr. Sweezy: We were fellow members of the teachers' union. It had various names. One time it was called the Cambridge Union of University Teachers, A. F. L.

Mr. Wyman: Did you introduce Struik at that meeting in New York to raise money for his defense?

Mr. Sweezy: I don't remember. I very likely did. If you have that information, I very likely did. I don't recall the details.

Mr. Wyman: Under what sponsorship was it held?

Mr. Sweezy: Monthly Review Associates.

Mr. Wyman: That is the magazine——

Mr. Sweezy (Interposing) That is the magazine of which I am co-editor. Monthly Review Associates is a group organized to raise money for "Monthly Review," hold meetings, forums, and lectures.

Mr. Wyman: Did you and do you remember whether or not there was anyone else at that New York meeting from New Hampshire?

Mr. Sweezy: No, I don't remember.

Mr. Wyman: Did you see him last March, meaning Struik, when he spoke at Dartmouth?

Mr. Sweezy: No.

Mr. Wyman: Have you attended the World Fellowship Center at North Conway at any time?

Mr. Sweezy: When Wallace was up here on his—or for the New Hampshire Progressive Party Convention in 1948, he stayed with us in Wilton; and I drove him around the State, and we had supper at the World Fellowship, but that is the only connection I had with it.

Mr. Wyman: Willard Uphouse was not there at the time, was he?

Mr. Sweezy: I don't recall it.

Mr. Wyman: Do you know Doctor Uphouse?

Mr. Sweezy: I think I met him once. I am not sure.

[fol. 33] Mr. Wyman: Have you seen him in New Hampshire in recent months?

Mr. Sweezy: No.

Mr. Wyman: Have you ever met with him in New Hampshire?

Mr. Sweezy: No.

Mr. Wyman: Have you advocated and taken action designed to aid the replacement of the free enterprise economic system of the United States with some other form?

Mr. Sweezy: You think this isn't ideas?

Mr. Wyman: I said have you advocated and taken action designed to aid the replacement of the free enterprise economic system of the United States with some other form?

Mr. Sweezy: Yes. I am a socialist and have been advocating socialism for a good many years.

Mr. Wyman: Do you object to making a statement concerning ideas which you maintain are not subversive with respect to the system which you advocate?

Mr. Sweezy: I don't object at all, except I don't like to do it under oath. I will debate with you in any forum in this State or anywhere else on the subject. What I object to is being forced to come here and talk under oath. If this isn't an invasion of a person's freedoms, I don't know what is.

Mr. Wyman: Let me finish, and perhaps we can indicate to your satisfaction that it isn't, because it certainly isn't intended as such.

Mr. Sweezy: I don't accuse you personally of intending it.

Mr. Wyman: What other form of economic system have your actions—again I am not talking about your state of mind—been aimed at establishing in America?

Mr. Sweezy: First I say that I think this is a distinction without a difference—by phrasing the question in a certain way, you want to get at my ideas and beliefs.

Mr. Wyman: I am not asking about your ideas and beliefs. I want to see what actions you take.

Mr. Sweezy: Is writing an action?

Mr. Wyman: You caused the book to be published?

Mr. Sweezy: Yes. Is writing and publishing an action, and are you permitted to do anything about actions, but not ideas? In that case you have a perfect formula for getting around the guarantees of freedom of press, haven't you?

Mr. Wyman: No. There is no restriction, restraint, or otherwise upon either freedom of speech or press. Action —and this is not in reference to yourself at all—but action— For example, advocacy of overthrow of the Govern- [fol. 34] ment by force and violence in a persons mind is one thing; but when they write the advocacy down and publish it and distribute it, there is then an action which is certainly far beyond the mere recesses of the human mind.

Mr. Sweezy: I think I said at the very outset that I do not advocate and never have in any other way promoted the forcible overthrow of constitutional forms of govern-

ment. I would like to give you for the record an article published in the latest issue of my magazine which is called "Socialism is Constitutional" written by a lawyer and constitutional expert.

Mr. Wyman: I will be glad to receive the article.

Mr. Sweezy: I have it right here. I may say this was written, long arranged to be written long before I knew anything about this hearing.

Mr. Wyman: This can be marked if you don't mind?

Mr. Sweezy: No, I don't mind. In fact, you can have the whole magazine.

Mr. Wyman: Let me get back to your advocacy and actions in connection with socialism. Is the type of socialism you advocate the socialism of the Socialist Party of Norman Thomas?

Mr. Sweezy: I couldn't tell you for sure, because I don't follow the literature of—Let me put it this way. I would call it the classical conception of socialism—public ownership of the means of production and general economic planning.

Mr. Wyman: Does not the socialism which you advocate involve the use of force and violence?

Mr. Sweezy: I would refer you again to this article. Certainly not.

Mr. Wyman: Your answer is no?

Mr. Sweezy: No.

Mr. Wyman: Isn't it a fact that the type of socialism you advocate is in effect in the dictatorships of Lenin, Stalin, and Malenkov?

Mr. Sweezy: No.

Mr. Wyman: Well, isn't the type of socialism that you advocate the type that would be in existence in a country after it was taken over by Communists?

Mr. Sweezy: By the way, I want to bring to your mind your questions about my ideas.

Mr. Wyman: I am questioning in an endeavor to understand what you mean by socialism as you have translated it in writing and distributed it in this country.

Mr. Sweezy: I am calling attention for the record that you are questioning me about my ideas; and in order to clarify certain points on which there is much public mis-

understanding, I want to answer. But I want to call your [fol. 35] attention to that fact.

Mr. Wyman: Read the question.

(Question read.)

Mr. Sweezy: I think that the Communist countries have an economic system of socialism, which does not mean, however, that I advocate the use of the methods of the Communist countries in this country, not at all. Most of them are countries which didn't have the democratic traditions and procedures we are fortunate enough to have. I think it is possible to effect changes in this country in a way that is very different from the way it was done in Russia and China, for example.

Mr. Wyman: In other words, without force and violence?

Mr. Sweezy: Yes, without force and violence. If I were in Britain today, I would be a member of the British Labor Party and would be working for a constitutional triumph of socialism; and if there were a labor party in this country comparable to the Labor Party in Britain, I'd be a member of it.

Mr. Wyman: Isn't it true, Mr. Sweezy, that the socialism you have been advocating, exists only in Communist countries today?

Mr. Sweezy: Yes, that is true. Britain hasn't actually succeeded yet in establishing a socialist system.

Mr. Wyman: Isn't it true that you and—I think it is your co-editor of the "Monthly Review"—Leo Huberman in 1950, in the first issue of the "Monthly Review," made the statement "Socialism became a reality with the introduction of the first Five-Year Plan in 1928. . . . We find completely unrealistic the view of those who call themselves socialists, yet imagine that socialism can be built on an international scale by fighting it where it already exists"?

Mr. Sweezy: Yes, we wrote that. I think this might be an appropriate place to read something else into the record, since you are reading all sorts of things that have certain implications. Let me read what a Soviet economist said about an article I wrote in "Monthly Review." Are you interested?

Mr. Wyman: I'd be delighted to hear.

Mr. Sweezy: This is by Mr. I. Blumin.

Mr. Wyman: I want you to understand when you get through, in thinking back upon what happened here today and in whatever comment you may characterize it as, that there is nothing which you have not been at liberty to state nor to incorporate in this record.

Mr. Sweezy: I agree.

This was translated by a friend of mine who knows Russian, and it is from an article by I. Blumin entitled "Bourgeois Economists in the Service of Militarism and War," and it is from the magazine "Voprosy Ekonomiki," September 1952.

[fol. 36] The apologetics for the armament race and war appear probably in the most shameless form in the works of P. Sweezy, an American bourgeois economist who in the past used to parade a "leftist" phraseology. In an article, "The American Economy and the Threat of War" ("Monthly Review," November 1950), Sweezy has made an attempt to furnish a "theoretical foundation" for the insane efforts of the American imperialists to find salvation from depressions in armament races and wars. In Sweezy's imagination, the growth of armaments exercises the same influence on the process of reproduction as a corresponding increase of mass consumption. "Capitalism's 'limitless striving for expansion of production,'" announces Sweezy to the world, "is no longer kept in check by 'the restricted consumption of the masses'; it is now spurred on and finds the conditions for its realization in the vast demand for weapons of destruction."

The apologetics for militarism in the article of Sweezy truly knows no limit. If one were to trust Sweezy, it would turn out that American capitalism was fortunate to find in the "economics of the Cold War" a magic wand that permits it not only to overcome depressions (crises) but all the contradictions of capitalism. It would turn out that in our time there are no more contradictions within the capitalist world, among the capitalist powers, that all that remained is the antagonism between two systems, the capitalist and the socialist.

Needless to say, the thesis advanced by Sweezy concerning the "abolition" in our time of contradictions among

imperialist states represents a crude falsification of facts. In his servility to the monopolies of Wall Street, Sweezy brazenly denies the drive of American capitalism towards world domination and the related inevitable sharpening of imperialist contradictions. In a tendentious fashion he covers with silence the transformation by the USA of the Marshallized countries into satellite dependencies. He is silent on the Anglo-American contradiction, the most important contradiction in the imperialist camp which becomes sharper all the time as the intensity of the struggle between American and British capitalists increases—a struggle for markets, for outlets for capital investment, for routes leading to markets and sources of raw materials, etc. "There can hardly be any doubt," remarks Comrade Beria, "that contradictions within the imperialist camp will become increasingly deep."

An equally crude falsification of facts is Sweezy's assertion that militarization purportedly contributes to overcoming the internal contradictions of capitalism. In actual fact the militarization of the economic life of the capitalist countries sharply increases all the contradictions that are characteristic of the capitalist mode of production, and first of all the contradiction between the urge of capitalism to-
[fol. 37] ward unlimited expansion of production and the limited consumption of the masses, which in turn reflects the basic contradiction of capitalism between the social character of production and the private-capitalist form of appropriation of the product. The militarization of the economies of the capitalist countries leads to a sharp increase of the pauperization of the toilers as a result of the processes of inflation connected with it, of price increases and enlarged taxes. Even bourgeois statistics cannot conceal these facts. As early as 1950 the real wages of American workers were 25 to 30 per cent lower than before the second World War. In 1951 a further decline took place. Cost of living in the United States increased from the beginning of 1950 to the end of 1951 by 19.3 per cent. The incomes of over 75 per cent of all American families are at the present time lower than even a beggar's subsistence minimum. All this causes a further lowering of the effective demand of the population and hence a further shrink-

age of the internal market. Sweezy and other apologists for militarism and war try to present the increase of demand for military output as a factor equivalent in its economic significance to an increase of consumers' demand. In doing so, the apologists of the bourgeoisie consciously cover up the fact that the increase of demand for military production is itself financed by methods that result in a contraction of personal consumption.

So you see, you have here a lackey of Wall Street.

Mr. Wyman: Did you not also support the purge trials in the Soviet Union according to the letter which was previously read into the record?

Mr. Sweezy: You didn't read the letter.

Mr. Wyman: The reference.

Mr. Sweezy: I said I don't remember it.

Mr. Wyman: Did you not also in the past support the Stalinists against the Trotskyites?

Mr. Sweezy: This is a very vague sort of question. Have you got anything specific in mind?

Mr. Wyman: No. I am asking you, not as to your state of mind, but whether you supported it?

Mr. Sweezy: I never thought it was my problem to support the Stalinists against the Trotskyites or vice versa.

Mr. Wyman: Well, have you attempted and do you attempt in your writings and your actions to advance the Soviet propaganda line?

Mr. Sweezy: Certainly not.

Mr. Wyman: Are you personally acquainted with Soviet officials in this Country?

Mr. Sweezy: No.

[fol. 38] Mr. Wyman: Do you know any of the embassy officials?

Mr. Sweezy: No.

Mr. Wyman: Have you met Ender?

Mr. Sweezy: No.

Mr. Wyman: Shostakovich?

Mr. Sweezy: He was at that Waldorf Peace Conference, but I didn't meet him.

Mr. Wyman: Have you met——

Mr. Sweezy: (Interposing) I don't think I met any of them. I really know very few Russians.

Mr. Wyman: Have you met or contacted in the past members of the National Committee of the Communist Party?

Mr. Sweezy: I have met both Earl Browder and William Z. Foster a long time ago. They both came to Harvard to give speeches.

Mr. Wyman: Did you meet with them at that time?

Mr. Sweezy: Yes. A good many other people did, too.

Mr. Wyman: Have you ever contacted anyone publicly alleged to be a Soviet espionage agent?

Mr. Sweezy: Well, I have known quite a few people in Washington who have been in the news lately, but in the course of perfectly legitimate official business; and I don't think that it is reasonable to put an implication of that kind into the record.

Mr. Wyman: Well, I seek to put no implications into this record at all.

Mr. Sweezy: By asking your question, you are already making an implication. I knew a great many people when I worked in Washington. I worked there in a number of capacities over a period of several years.

Mr. Wyman: Do you know Elizabeth Gurley Flynn?

Mr. Sweezy: No. I haven't met her.

Mr. Wyman: Did you in 1949 advocate that the Committee on Un-American Activities be abolished?

Mr. Sweezy: Yes. I advocate it every year.

Mr. Wyman: Do you advocate now, today, that the Government of the United States or of the various states inquire into alleged subversion in this country purposing to establish either a Nazis or Fascist dictatorship in this country?

Mr. Sweezy: No. I am against all these inquiries. I think the loss that they involve is much greater than any possible gain, and I think a country that is operating a democratic system form of government efficiently has absolutely nothing to worry about from subversion.

Mr. Wyman: I certainly hope so.

Mr. Sweezy: Well, the implication of that is that if you think the system is threatened by subversion, you should [fol. 39] get out and make the system work better.

Mr. Wyman: Did you advocate the governments not inquire into subversion control from abroad to see whether

it does exist in this State for the purpose of establishing in this Country the dictatorship?

Mr. Sweezy: I think you are scaring people to death with this supposed threat, and the gains from investigating it, if any, are so tiny that the whole thing is absurd.

Mr. Wyman: Certainly nothing that has happened here today scares you, does it?

Mr. Sweezy: That isn't the point. I know that is a favorite—"You are not terrified, are you"—but it isn't that. I taught long enough to know what happens to students and others who are deciding what it is safe to think, what ways it is prudent to allow your mind and your actions to go; and I think the consequence of these investigations is definitely to make younger people, particularly, frightened to think, to use their minds, to explore lines of inquiry, to act in a way that later on may be held against them in spite of the fact that they may change their minds completely. They don't get the valuable experience that I think the students used to get during the '30's from lively political discussion and association. Universities and colleges today are dead compared to what they were in the '30's.

Mr. Wyman: If a student today was known—and I will admit this is hypothetical, and you do not have to answer it if you do not wish it—if a student today was known by you to choose after a course of teaching that was objective, was known to choose Communism, would you not attempt to dissuade him from the choice?

Mr. Sweezy: He has——

Mr. Wyman: (Interposing) He has taken a course which has been objective. In other words, by assumption, there has been no attempt to slant the course or to indoctrinate him. He has been taught the facts of Socialism, Communism, Democracies, Fascism, and so forth; and he is known to have chosen the Communist way. Would you not, if you knew that today, attempt to dissuade him from that choice?

Mr. Sweezy: I wouldn't attempt to dissuade him. I'd discuss it with him, find out why and tell him what I thought. No, I am not going around attempting to dissuade people.

Mr. Wyman: Even if he chose Communism?

Mr. Sweezy: I think there is a great deal of misunderstanding about Communism. This is a historical force that is here to stay, and this Country is going to get used to living with it, if not at home, at any rate abroad, because there is no possibility of this country's or the Soviet [fol. 40] Union's annihilating the other. There are many wholly sincere admirable people who are Communists; and my own belief is if we can establish peace between the two systems, Communism will evolve in a direction which is much less objectionable to people in this Country.

Mr. Wyman: You have voluntarily made a statement there about belief.

Mr. Sweezy: That's right. I'd be very happy to have it go in the record.

Mr. Wyman: Let me ask you along that line, and again you need not answer if you do not wish to, do you feel, based upon your knowledge, that the Communist system and the Capitalist system can peacefully exist side by side in this world?

Mr. Sweezy: I certainly do. They had better be able to.

Mr. Wyman: Were you a member of the Communist Party in the early '30's?

Mr. Sweezy: Never. I said that at the outset.

Mr. Wyman: You didn't break with the party at that time?

Mr. Sweezy: I never was a member of the Party.

Mr. Wyman: Did you attend Party meetings at that time?

Mr. Sweezy: I never attended Party meetings.

Mr. Wyman: Nowhere?

Mr. Sweezy: Never, no.

Mr. Wyman: I'd like to take a short recess here for about five minutes if we can. It won't be much longer.

(Short recess).

Mr. Wyman: Now, I am going to get back to the record here for a minute to some more of the Progressive Party questions, because on review I find they haven't been covered; and I am aware of the fact that you have declined to answer them.

I don't remember whether or not you testified when you first joined the Progressive Party?

Mr. Sweezy: No, I didn't testify anything about that.

Mr. Wyman: Well, did you pay dues to the Progressive Party?

Mr. Sweezy: Decline to answer.

Mr. Wyman: How much were the dues?

Mr. Sweezy: I decline to answer.

Mr. Wyman: Who collected the dues?

Mr. Sweezy: Decline to answer.

Mr. Wyman: Do you know who the Progressive Party officers in New Hampshire have been since August of 1951?

Mr. Sweezy: Decline to answer.

Mr. Wyman: Do you know where the headquarters of the [fol. 41] Progressive Party in New Hampshire is?

Mr. Sweezy: Decline to answer.

Mr. Wyman: Do you know of any indication that the Communist Party is interested in the Progressive Party?

Mr. Sweezy: Decline to answer.

Mr. Wyman: Do you know whether or not the Communist Party officially is connected with the Progressive Party in New Hampshire formally or informally?

Mr. Sweezy: I have no such knowledge, and I'd like to state the same to the previous question.

Mr. Wyman: The previous questions?

Mr. Sweezy: No, the previous one just before that—the last previous question.

Mr. Wyman: I see. Do you know whether or not the Progressive Party in New Hampshire, if it exists or at any time previous to the present time since it has existed in New Hampshire, has been influenced or dominated by the Communist Party?

Mr. Sweezy: I have no such knowledge.

Mr. Wyman: You mean you didn't know or——

Mr. Sweezy: (Interposing) I have no knowledge that it ever was.

Mr. Wyman: Do you know whether or not there are Communists within the Progressive Party in New Hampshire?

Mr. Sweezy: I do not. I never ask people that question.

Mr. Wyman: I might say to you at this point that I have purposely not asked you questions concerning your wife

here today for the reason that we'll ask her herself in private session.

Do you know of any instances in New Hampshire where the Communists have tried to influence the decisions, actions, or platform of the Progressive Party?

Mr. Sweezy: I think I testified at the outset of my own knowledge I don't know there are any Communists in New Hampshire, and I think that answers the question. No, I don't know of any such.

Mr. Wyman: Do you know Irma Otto?

Mr. Sweezy: Decline to answer.

Mr. Wyman: On what ground?

Mr. Sweezy: To be consistent. You asked me earlier—

Mr. Wyman: (Interposing) But not on the claim of the privilege against self incrimination?

Mr. Sweezy: No.

Mr. Wyman: Do you know Muriel Gravelle?

Mr. Sweezy: I decline to answer all questions about people I met in the normal course of the Progressive Party.

Mr. Wyman: Do you know Harold Horne?

[fol. 42] Mr. Sweezy: Decline to answer.

Mr. Wyman: I am not asking you now, sir, whether you knew them in the Progressive Party. I am asking you in general whether or not you know these people.

Mr. Sweezy: I understand that, but I also know, I can understand the motivation of the line of inquiry; and I think, to be consistent, that is the only position I can take. Of course, if we go to court on this, we can find out.

Mr. Wyman: Do you know Alexander Karanikas and Abraham Walenko?

Mr. Sweezy: Decline both.

Mr. Wyman: Do you know any facts or connection between these people just listed and members of the Communist Party?

Mr. Sweezy: I don't know any members of the Communist Party. As I said, I never ask people that question. It is an absolute principle with me not to ask people whether they are Communist or not.

Mr. Wyman: Well, I want to, I want the record to show at this point I am not asking you now a question concerning your mental state of mind as to why you don't do that. That I specifically leave unasked.

Do you know, for example, whether or not any of those individuals have ever made the statements or otherwise indicated that they were members of the Communist Party at any time in the past?

Mr. Sweezy: I know nothing about that, no.

Mr. Wyman: Have you ever attended meetings of the Liberal Club at the University of New Hampshire in the late '40's?

Mr. Sweezy: Yes. I spoke at the Liberal Club. I am trying to think of any reason why I shouldn't answer.

Mr. Wyman: When?

Mr. Sweezy: I don't remember when. I was invited down and spoke there.

Mr. Wyman: Who invited you?

Mr. Sweezy: The president of the Club. I don't remember who it was.

Mr. Wyman: Was it in 1947?

Mr. Sweezy: I don't remember. A nice invitation. It could have been, but I can't say.

Mr. Wyman: Was Professor Daggett faculty advisor to the Club at that time?

Mr. Sweezy: I don't know.

Mr. Wyman: Did you see him at that time?

Mr. Sweezy: I don't remember who I saw.

Mr. Wyman: Have you ever contributed money to the [fol. 43] Communist Party?

Mr. Sweezy: No.

Mr. Wyman: Have you ever transmitted money to the Communist Party?

Mr. Sweezy: No.

Mr. Wyman: Have you any information not covered at this point by the questions attempted to be asked of you today about so-called subversive activities or subversive persons in New Hampshire?

Mr. Sweezy: I know nothing of any subversive activities or subversive persons in New Hampshire, using that term in the strict definition of the 1951 legislation. There are so many different definitions of "subversive" that I think we have to say just what we mean by it.

Mr. Wyman: I agree with you, and we do use that definition, of course, under the Resolution.

Do you know David Bradley?

Mr. Sweezy: I don't know whether I should decline to answer or not. I don't know in what connection you might be asking me. I decline to answer.

Mr. Wyman: Are you related to David Bradley?

Mr. Sweezy: I decline to answer.

Mr. Wyman: Well, now, I want to say on the record before we see if there are any further questions by Mr. Conner that I regret exceedingly that you have declined to answer questions here today, as you put it, on the basis of principle. However, that is your free choice; and for the reason that, as I think you know, being an intelligent man, from reading the Rules of Procedure, that, of course, the declination to answer means that the transcript of the testimony here will be made public. I do not now know whether or not it will become necessary to apply to the Superior Court to go further. It may appear, after the examination of the transcript, that the questions are not sufficiently vital to the investigation to require that; but if it does, why, of course, we will have to so apply. I just want to make sure, Mr. Sweezy, that you understand that in connection with this questioning here today.

Mr. Sweezy: Yes, I understand it. I have talked this matter over with counsel, and I think that I am on sound ground in refusing to answer these questions. I am not doing it in a defiant sense. I think I am right to decline. I think I could have declined a great deal more.

Mr. Wyman: Any questions, Mr. Conner?

Mr. Conner: Yes.

In 1948, Mr. Sweezy, did you appear before the New York hearings concerning the International Workers Order and take the position that the International Workers Order [fol. 44] should not be ruled out of existence in the State of New York?

Mr. Sweezy: Never appeared in any such hearings.

Mr. Conner: Would you have any explanation as to why the official organ of the International Workers Order might have carried such an article indicating that?

Mr. Sweezy: No idea whatever, but I am perfectly certain I never appeared at any hearings in New York of any kind.

Mr. Conner: Did you in any way support the IWO in its legal struggle in New York?

Mr. Sweezy: I might have signed a statement, but I don't recall it. But I certainly didn't appear at any hearings.

Mr. Conner: Did you contribute to the "New Masses Magazine" in 1947?

Mr. Sweezy: I don't remember.

Mr. Conner: The International Workers Order has, of course, been cited by the United States Attorney General as a subversive organization, and "New Masses" has been also cited as a Communist periodical by the United States Attorney General.

Mr. Sweezy: Did I contribute in 1947?

Mr. Conner: No. I just make that statement.

Mr. Sweezy: Yes. You asked whether I did, and I am asking you whether or not you have information I did?

Mr. Conner: Yes. Apparently on the April 22, 1947, issue, page 21, you did.

Mr. Sweezy: Do you have a copy of that article?

Mr. Conner: No.

Mr. Sweezy: Maybe it was a denunciation of the "New Masses."?

Mr. Conner: Well, you were listed as a contributor.

Mr. Sweezy: You don't follow up the information you get?

Mr. Conner: We haven't been able to follow up everything as yet.

Mr. Wyman: That is one of the reasons why we are asking you if you remember what that article was—if it was in fact a criticism of the "New Masses." You are perfectly at liberty to say so.

Mr. Sweezy: I don't happen to recall the thing at all.

Mr. Conner: Have you ever had occasion to consult Alexander Bittleman?

Mr. Sweezy: No. Mr. Bittleman wrote an article about "Monthly Review," however, in what I suppose was the official organ of the Communist Party, a magazine called "Political Affairs," in which he called "Monthly Review" and me just about all the names in the Communist lexicon. I have that article if you would like me to read some [fol. 45] excerpts from it.

Mr. Conner: One part of the article to which I presume you refer, I quote. "Monthly Review had to make a choice." Bittleman said . . . "it must reverse its course immediately and clearly translate into deeds own call for co-operation on the left . . . or become an enemy of the Communist Party and lose its support."

Did, before that article was written, the "Monthly Review" have the support of the Communist Party?

Mr. Sweezy: Never had it.

Mr. Conner: It doesn't now?

Mr. Sweezy: No. It is a completely independent magazine.

Mr. Conner: Is this a true evaluation of the "Monthly Review," and I am quoting from a previously published evaluation of the "Monthly Review." "The review of a Communist-line publication that parades under the discussion of an independent socialist magazine."

Mr. Sweezy: It is a completely inaccurate description. As I said, "Monthly Review" is an entirely independent magazine which follows the line of its editors and of nobody else.

Mr. Wyman: I note, Mr. Sweezy, in this appendix to the transcript which you offered, which is stated it is the "Monthly Review" for January 1954, that at page 434; in the conclusion of the article entitled "The Roots and Prospects of McCarthyism" there is the statement made that "while we are explaining this, let us not forget that the root of the trouble is capitalism, not McCarthyism. We will never be out of the woods, nor will the world at large, as long as the United States has its present crazy economic system. No doubt that means we have a long way to go. But at any rate let's not lose sight of where we're going."

I take it by that is meant going toward the socialism you have spoke of here today, and not toward Communism?

Mr. Sweezy: That is correct.

Mr. Wyman: And I note, also, that at page 434 immediately following that quotation there appears a quotation from Archibald MacLeish in the "Atlantic Monthly" of August 1949 to the effect that revolution—and I am now paraphrasing, which was once spoken of with pride by

every American, is now—well, I will quote—"become a word spoken with timidity and doubt and even loathing. The true test of freedom is in its use. It has no other test."

Was that statement, coupled with the printing immediately above, intended to indicate an advocacy that revolution is the system of the answer to the change in the "crazy economic system"?

Mr. Sweezy: No. That was just a little filler. We find a little space needs filling up. If you'd like to spend the time, I will give you my thoughts on overthrowing govern- [fol. 46] ment. Let me just say that concisely I find the tenth article of the New Hampshire Bill of Rights an admirable statement of my own position.

Mr. Wyman: And concisely do you maintain that the conditions spoken of or set forth in the tenth article of the Bill of Rights have become so oppressive and intolerable in this Country as to warrant the existence of the right of revolution at this time?

Mr. Sweezy: I don't think the right is sometimes existing and sometimes not existing. I think if it exists, it always exists. But I do not think the conditions at the present time are such that the right of revolution should be exercised. In fact I think it would be illegitimately exercised at the present time. As long as the constitutional methods of political action are open, I believe in their maximum utilization; but I can easily imagine a time when that wouldn't be so.

If I had been a German under Hitler, I would have—very inefficiently, I am sure—but I would have been in favor of overthrowing him.

Mr. Conner: In the "Monthly Review" have you yourself taken the position that the only kind of a settlement which would really solve the German problem would be unification of the Country coupled with the kind of structural reforms which have been already instituted in the Soviet Zone?

Mr. Sweezy: Yes. Do you know what those reforms are that I refer to?

Mr. Conner: No.

Mr. Sweezy: They are abolition of the big Prussian

Junker states and a large degree of nationalization of the big monopolies. Those are what I had in mind. I think that history shows very clearly that the war-making forces in Germany have always been the East Elbian Junkers and the representatives of the East and West German big industrialists.

Mr. Conner: Is it not true that you have in the past supported and co-signed documents to the effect that you supported Stalin in his purge trials?

Mr. Sweezy: This was asked by Mr. Wyman earlier. I recollect no such documents.

Mr. Conner: We have information that you did become involved with that type of activity and also information you became involved with the activity of taking the side of Stalin as against Trotsky. Now, I cannot understand how any person who believed in pure classical socialism could become involved, take sides in an internal struggle in a Stalinist dictatorship.

Mr. Sweezy: I already said I don't recall taking such sides, and I certainly don't regard it as my business to do [fol. 47] it. I don't know what you are referring to.

Mr. Conner: The documents are not vague at all.

Mr. Wyman: Will you state for the record and for the information of Mr. Sweezy what the references are so that he may know exactly upon what you base your last statement?

Mr. Conner: We have information that March 1937 you were one of the signers of the "Open Letter to American Liberals" and that that letter pointed out the error of those who might have signed up with the Committee for Defense of Leon Trotsky, protesting against that Committee's attack on the Soviet Regime; and in a forward to that letter this statement appeared, "Thus not since its earliest years has the U. S. S. R. so needed the support of its friends wheresoever they may be, and it was to help rally all genuine friends of the Soviet friends in America that this letter was written." I believe the other reference——

Mr. Sweezy: (Interposing) I don't recall the letter at all. You can be quite certain it was never one of my main activities, supporting Stalinists versus Trotskyites or the other way around.

Mr. Wyman: Is that all?

Mr. Conner: That is all.

Mr. Wyman: Is there anything further that you would like to say, Mr. Sweezy?

Mr. Sweezy: I don't think so.

Mr. Wyman: May I ask you just by way of passing, have you been treated courteously here today?

Mr. Sweezy: Yes.

Mr. Wyman: I will not and cannot at this time, of course, in view of your decision with respect to the refusal to answer certain questions, release you from subpoena. The subpoena will have to remain until we decide further what seems to be warranted; and I will ask you just the remaining few questions at this point so that they can be stricken from the public record in the matter.

Are you personally acquainted with Professor Stearns Morse at Dartmouth University?

Mr. Sweezy: I decline to answer on the same grounds.

Mr. Wyman: Are you personally acquainted with Professor Ramon Guthrie?

Mr. Sweezy: Decline.

Mr. Wyman: Professor Laing of Dartmouth?

Mr. Sweezy: Decline.

Mr. Wyman: Professor Michael Choukas of Dartmouth?

Mr. Sweezy: Decline to answer.

Mr. Wyman: Are you personally acquainted with Pro-
[fol. 48] fessor John Finch at Dartmouth?

Mr. Sweezy: Decline.

Mr. Wyman: Are you personally or by marriage acquainted with the treasurer of Dartmouth, John Meek?

Mr. Sweezy: By marriage? I decline to answer. Is that what you said?

Mr. Wyman: Strike out "by marriage." By relation or personally?

Mr. Sweezy: Blood relation?

Mr. Wyman: Yes.

Mr. Sweezy: I decline to answer.

Mr. Wyman: Are you personally acquainted with Professor G. Reid Johnson at the University of New Hampshire?

Mr. Sweezy: Decline to answer.

Mr. Wyman: All right. That is all, sir. Thank you very much.

(Whereupon, at 12:30 o'clock, p. m., Friday, January 8, 1954, the above hearing was closed.)

Appendix A—Statement Read by Mr. Sweezy at Hearing of January 8, 1954

Those called to testify before this and other similar investigations can be classified in three categories.

First, there are Communists and those who have reason to believe that even if they are not Communists they have been accused of being and are in danger of harassment and prosecution.

Second, there are those who approve of the purposes and methods of these investigations.

Third, there are those who are not Communists and do not believe they are in danger of being prosecuted, but who yet deeply disapprove of the purposes and methods of these investigations.

The first group will naturally, and I think wholly justifiably, plead the constitutional privilege of not being witnesses against themselves.

The second group will equally naturally be cooperative witnesses.

The third group is faced with an extremely difficult dilemma. I know because I belong to this third group, and I have been struggling with its problems for many weeks now. I would like to explain what the nature of that dilemma is. I think it is important that both those conducting these inquiries and the public should understand.

It is often said: If a person is not a Communist and has nothing to fear, why should he not answer whatever questions are put to him and be done with it? The an- [fol. 49] swer, of course, is that some of us believe these investigations are evil and dangerous, and we do not want to give our approval to them, either tacitly or otherwise. On the contrary, we want to oppose them to the best of our

ability and persuade others to do likewise, with the hope of eventually abolishing them altogether.

Our reasons for opposing these investigations are not captious or trivial. They have deep roots in principle and conscience. Let me explain with reference to the present New Hampshire investigation. The official purpose of the inquiry is to uncover and lay the basis for the prosecution of persons who in one way or another promote the forcible overthrow of constitutional forms of government. Leaving aside the question of the constitutionality of the investigation, which is now before the courts, I think it must be plain to any reasonable person who is at all well informed about conditions in New Hampshire today that strict adherence to this purpose would leave little room for investigation. It is obvious enough that there are few radicals or dissenters of any kind in New Hampshire; and if there are any who advocate use of force and violence, they must be isolated crackpots who are no danger to anyone, least of all to the constitutional form of government of state and nation. The Attorney General should be able to check these facts quickly and issue a report satisfying the mandate laid upon him by the legislature.

But this is not what he has done. We do not know the whole story, but enough has come out to show that the Attorney General has issued a considerable number of subpoenas and has held hearings in various parts of the state. And so far as the available information allows us to judge, most of those subpoenaed have fallen into one or both of two groups: first professors at Dartmouth and the University of New Hampshire who have gained a reputation for liberal or otherwise unorthodox views, and, second, people who have been active in the Progressive Party. It should be specially noted that whatever may be thought of the Progressive Party in any other respect, it was certainly not devoted to violent overthrow of constitutional forms of government but on the contrary to effecting reforms through the very democratic procedures which are the essence of constitutional forms of government.

The pattern I have described is no accident. Whatever

their official purpose, these investigations always end up by inquiring into the politics, ideas, and beliefs of people who hold what are, for the time being, unpopular views. The federal House Committee on Un-American Activities, for example, is supposed to investigate various kinds of propaganda and has no other mandate whatever. Over the years, however, it has spent almost no time investigating propaganda and has devoted almost all of its ener- [fol. 50] gies to "exposing" people and their ideas, their affiliations, their associations. Similarly, this New Hampshire investigation is supposed to be concerned with violent overthrow of government, but it is actually turning out to be concerned with what few manifestations of political dissent have made themselves felt in the state in recent years.

If all this is so, and if the very first principle of the American constitutional form of government is political freedom—which I take to include freedoms of speech, press, assembly, and association—then I do not see how it can be denied that these investigations are a grave danger to all that Americans have always claimed to cherish. No rights are genuine if a person, for exercising them, can be hauled up before some tribunal and forced under penalities of perjury and contempt to account for his ideas and conduct.

Let us now return to the problem of the witness who would have nothing to fear from being what is nowadays styled a "friendly" witness, but who feels deeply that to follow such a course would be a betrayal of his principles and repugnant to his conscience. What other courses are open to him?

He can claim the privilege not to be a witness against himself and thus avoid a hateful inquisition. I respect the decision of those who elect to take this course. My own reason for rejecting it is that, with public opinion in its present state, the exercise of the privilege is almost certain to be widely misinterpreted. One of the noblest and most previous guarantees of freedom, won in the course of bitter struggles and terrible suffering, has been distorted in our own day to mean a confession of guilt, the more sinister because undefined and indeed undefinable. It is

unfortunate, but true, that the public at large has accepted this distortion and will scarcely listen to those who have invoked the privilege.

Alternatively, the witness can seek to uphold his principles and maintain his integrity, not by claiming the protection of the Fifth Amendment (or the Fifteenth Article of the New Hampshire Bill of Rights), but by contesting the legitimacy of offensive questions on other constitutional and legal grounds.

Just how far the First Amendment limits the right of legislative inquiry has not been settled. The Supreme Court of the United States is at this very moment considering a case (the *Emspak* case) which may do much to settle the question. But even before the Court has handed down its decision in the *Emspak* case, it is quite certain that the First Amendment does place *some* limitations on the power of investigation, and it is always open to a witness to challenge a question on the ground that it transgresses these limitations and, if necessary, to take the issue to the courts for decision.

[fol. 51] Moreover, a witness may not be required to answer questions unless they are "pertinent to the matter under inquiry" (the words are those of the United States Supreme Court).

What is the "matter under inquiry" in the present investigation? According to the Act of the New Hampshire legislature directing the investigation, its purpose is twofold: (1) "to make full and complete investigation with respect to violations of the subversive activities act of 1951," and (2) "to determine whether subversive persons as defined in said act are presently located within this state."

I have studied the subversive activities act of 1951 with care, and I am glad to volunteer the information that I have absolutely no knowledge of any violations of any of its provisions; further, that I have no knowledge of subversive persons presently located within the state.

That these statements may carry full conviction, I am prepared to answer certain questions about myself, though in doing so I do not mean to concede the right to ask them. I am also prepared to discuss my views relating to the use

of force and violence to overthrow constitutional forms of government.

But I shall respectfully decline to answer questions concerning ideas, beliefs, and associations which could not possibly be pertinent to the matter here under inquiry and/or which seem to me to invade the freedoms guaranteed by the First Amendment to the United States Constitution (which, of course, applies equally to the several states).

Hearings Conducted Pursuant to Laws of 1953, Chapter 307

State House, Concord, New Hampshire, June 3, 1954

PAUL M. SWEEZY the witness, being previously sworn, was examined and testified as follows:

Mr. Phinney: May we have the record show that your forces are here intact?

Attorney General Wyman: The record will show the presence of everyone who is here.

Mr. Phinney: Good.

[fol. 52] Attorney General Wyman: This is a resumption of testimony in answer to a subpoena originally issued. Now, Mr. Sweezy, I have asked you to come back here today to resume testimony with respect to the investigation under Laws of 1953, Chapter 307, and I want to have the Rules of Procedure followed carefully by your counsel and by myself. What I mean is that the questions asked of you today, the answers are expected to come from you. You are welcome, if your counsel—You are welcome to consult with your counsel. If your counsel has legal objections, he may state them. I do not wish to get into an exchange with counsel at any time. So do you understand that?

The Witness: Yes.

Attorney General Wyman: Was your wife Maxine Yaple a member of the Communist Party at any time in the past?

The Witness: Not that I know of.

Attorney General Wyman: Do you know where she lives now?

The Witness: In the Philadelphia area.

Attorney General Wyman: Have you been in communication with her recently?

The Witness: Well, I am trying to remember. Yes, I talked to her on the phone not too long ago.

Attorney General Wyman: Could you tell me where I could communicate with her in writing?

The Witness: I can find out.

Attorney General Wyman: Will you find out and let me know?

The Witness: Yes, sir.

Attorney General Wyman: Now, your second wife Nancy Adams Sweezy is really Nancy McDougall Sweezy, isn't she?

The Witness: No. Her name is Nancy Adams.

Attorney General Wyman: She is the daughter of Mr. McDougall?

The Witness: No. Her mother's maiden name was McDougall.

Attorney General Wyman: Oh, I see. She is the daughter of Charles Adams and Viola Adams?

The Witness: Yes.

Attorney General Wyman: Was she active in the formation of the Progressive Citizens of America, working with individuals who were then members of the Communist Party?

Mr. Phinney: To that I object.

The Witness: This is a question which I think is irrelevant to the inquiry, and I decline to answer.

[fol. 53] Attorney General Wyman: You decline to answer on the ground of irrelevancy?

The Witness: Yes.

Attorney General Wyman: Do you know whether or not any of the individuals with whom she worked in 1947 in forming the Progressive Citizens of America were in the Communist Party?

The Witness: I have stated previously, and I repeat, that I do not know of my own personal knowledge and have not known at any time members of the Communist Party

in New Hampshire. I don't think it is going to do any good to repeat these questions and get the same answers every time.

Attorney General Wyman: You mean that you don't know any members of the Communist Party now in New Hampshire?

The Witness: That is what I said.

Attorney General Wyman: Do I understand your testimony to be then that, so far as you know, Elba Chase Nelson is not now a member of the Communist Party?

The Witness: I didn't say that. I said I do not know of my own personal knowledge who is a member or who isn't a member of the Communist Party.

Attorney General Wyman: Was the Progressive Citizens of America the forerunner of the Progressive Party in this State?

The Witness: Yes.

Attorney General Wyman: Was Charles Beebe active in forming the Progressive Citizens of America?

Mr. Phinney: Object.

The Witness: This comes under the category of irrelevant questions.

Attorney General Wyman: Do I understand you decline to answer on grounds of irrelevance?

The Witness: Yes.

Attorney General Wyman: Do he work with your present wife—Did Charles Beebe work with your present wife in 1947?

Mr. Phinney: Object.

Attorney General Wyman: Was he then a member of the Communist Party?

The Witness: Mr. Wyman, I told you that I didn't know any members of the Communist Party then or later.

Attorney General Wyman: Did you then know Abraham Walenko?

The Witness: Yes. When was then?

Attorney General Wyman: In 1947?

The Witness: No.

[fol. 54] Attorney General Wyman: When did you first know Abraham Walenko?

The Witness: I think it was in 1948.

Attorney General Wyman: Was he a member of the Communist Party?

The Witness: I don't know.

Attorney General Wyman: Did you know Harold Horne and Paul Martineau?

The Witness: Yes.

Attorney General Wyman: And Charlie Chase?

The Witness: Yes.

Attorney General Wyman: Your answer to each of those is yes?

The Witness: Yes.

Attorney General Wyman: When did you know them?

The Witness: In 1948.

Attorney General Wyman: Did you know them in 1947?

The Witness: No.

Attorney General Wyman: What makes you so sure now that you didn't know them in 1947?

The Witness: Well, I just hadn't met them. I know that.

Attorney General Wyman: Were they then members of the Communist Party?

The Witness: I don't know. I have seen in the paper within the last month or so that Charles Chase was.

Attorney General Wyman: Well, going back to Charles Beebe, Mr. Sweezy, he runs a ski tow, doesn't he, or did at that time?

The Witness: Whether he did then, I don't know. I know he has.

Attorney General Wyman: And purely socially, if you wish, didn't you and Nancy used to go to the ski tow quite often?

The Witness: No. I never skied myself.

Attorney General Wyman: Wasn't Charlie Beebe active in connection with the Progressive Citizens of America?

Mr. Phinney: Objection.

The Witness: This is the same question. I am not going to answer on grounds of relevancy.

Attorney General Wyman: If I told you that I had sworn testimony by Mr. Charles Beebe that he was then a member of the Communist Party, would that surprise you?

The Witness: Surprise me? I don't know. Are you telling me that you have?

Attorney General Wyman: I said if I told you, would [fol. 55] that surprise you?

The Witness: No. I don't know that I'd be particularly surprised if you told me anybody was.

Attorney General Wyman: Do you know Charles Bancroft McLane?

The Witness: I may. Could you elucidate a little further?

Atttorney General Wyman: Did Charles Bancroft McLane work with Nancy in the formation of the Progressive Citizens of America?

Mr. Phinney: Objection.

The Witness: In the first place, I don't know that I know Charles Bancroft McLane. If your want to give me some more indication——

Attorney General Wyman: (Interposing) Do you know his wife Carrol Evarts?

The Witness: Is that Judge McLane's son?

Attorney General Wyman: That's correct.

The Witness: I have met Charlie McLane, but never in New Hampshire.

Attorney General Wyman: Do you have any knowledge as to whether Charles McLane or his wife were ever members of the Communist Party?

The Witness: I would like to standardize my answer to that some way, that I don't know that anybody—That is not true. I do know some people having been members of the Communist Party—publicly so. No, I don't.

Could I consult with Bill?

Attorney General Wyman: Yes, sir.

You said, I believe, that you desired to standardize your answer?

The Witness: Yes.

Attorney General Wyman: What do you mean?

The Witness: I would like to handle all of these cases in the same way, and the answer is no to the last question.

Attorney General Wyman: What was the last question to which the answer was no?

(Question read as follows: "Do you have any knowledge as to whether Charles McLane or his wife were ever members of the Communist Party?")

Attorney General Wyman: Do you know whether or not either Charles B. McLane or his wife were active in the formation of the Progressive Citizens of America?

Mr. Phinney: Objection.

Attorney General Wyman: In New Hampshire?

[fol. 56] The Witness: I decline to answer on the grounds of relevancy.

Attorney General Wyman: Are you familiar with the Russian Institute at Columbia University? Do you know what it is?

The Witness: If it is what—I am not sure that the name is exactly the Russian Institute, but I know a branch of the Columbia Graduate School where they specialize in studying Russian institutions and languages. I won't say I am familiar with it.

Attorney General Wyman: Did Charles B. McLane attend the Russian Institute at Columbia in 1947?

The Witness: That I wouldn't know.

Attorney General Wyman: Was Charles B. McLane employed by the Joint Committee on Slavic Studies in New York City in 1948 and 1949 to your knowledge?

The Witness: I don't know.

Attorney General Wyman: Do you know what the Joint Committee on Slavic Studies is?

The Witness: No.

Attorney General Wyman: You never heard it?

The Witness: I never heard it.

Attorney General Wyman: Mr. Conner, do you have any information on the Slavic, on the Joint Committee on Slavic Studies?

Mr. Conner: My information is outside.

(Mr. Conner left the room.)

Attorney General Wyman: Make an insert so Mr. Conner can insert what he has when he comes back into the room.

Mr. Sweezy, where and when did you first know Abraham Walenko?

The Witness: I think it was in Manchester in 1948 sometime.

Attorney General Wyman: You don't remember just where you first met him?

The Witness: No.

Attorney General Wyman: Have you been to his house in Weare?

The Witness: Yes.

Attorney General Wyman: Did you attend a lecture there by Elizabeth Gurley Flynn?

The Witness: No.

Attorney General Wyman: When did you go to his house in Weare?

The Witness: During 1948.

Attorney General Wyman: Did it have anything to do with the Communist Party?

[fol. 57] The Witness: No.

Attorney General Wyman: Did it have anything to do with the Progressive Party?

Mr. Phinney: Objection.

The Witness: Decline to answer.

Attorney General Wyman: On the ground of irrelevancy?

The Witness: Yes.

Mr. Phinney: May I say for the record now that while I think that the objection on the ground of irrelevancy is sufficient, that I don't want the Attorney General to think that Mr. Sweezy is to be precluded from utilizing any other objection, Constitutional or otherwise.

Attorney General Wyman: Yes, I understand.

Do you have that information yet, Mr. Conner?

Mr. Conner: We have no information about that.

The Witness: Could I interject and ask if you have any evidence of any connection of mine with that Committee?

Attorney General Wyman: I am sorry. I have to ask the questions. I don't necessarily wish to imply by asking a question about Charles B. McLane's employment that you had any connection whatever on the Joint Committee on Slavic Studies. The answer is no.

Was Charles B. McLane in the service of the United States Department of State in 1949 until 1952?

The Witness: Well, I heard that he was, but whether it was State or Central Intelligence I don't know. I know that he went to Moscow and was attached to the embassy there.

Attorney General Wyman: Was assigned to the Russian Embassy?

The Witness: United States Embassy.

Attorney General Wyman: Pardon me, United States Embassy. Did you have any contact or communication whatever with him during that period?

The Witness: No. I didn't meet him until after he got back.

Attorney General Wyman: When did you first meet him?

The Witness: Oh, I met him at a social gathering in New York.

Attorney General Wyman: What type of——

The Witness: (Interposing) I don't recall just—It may have been a year ago or something like that.

Attorney General Wyman: Do you remember whether [fol. 58] it was a private social gathering or under the auspices of an organization?

The Witness: Friends of mine.

Attorney General Wyman: Do you have in your house a short-wave radio transmitter, Mr. Sweezy?

The Witness: No.

Attorney General Wyman: Did you ever have one in your house?

The Witness: No.

Attorney General Wyman: You're quite sure of that?

The Witness: Absolutely. I have an FM aerial on the roof which might give rise to certain apprehensions.

Attorney General Wyman: But you have never had a radio transmitter in your house to your knowledge?

The Witness: Never.

Attorney General Wyman: Nor has there been one physically located on your premises to your knowledge?

The Witness: Never.

Attorney General Wyman: Is the meeting in New York to which you referred concerning Mr. McLane the only time you met with him?

The Witness: I think it is, yes.

Attorney General Wyman: Do you know where he is now and what he is doing?

The Witness: Well, last I heard he was due to go to Swarthmore at the beginning of this year.

Attorney General Wyman: As a professor?

The Witness: Teacher in some capacity.

Atttorney General Wyman: Do you know where he is now?

The Witness: No, I don't.

Attorney General Wyman: And you don't know what he is doing now?

The Witness: I assume he is teaching at Swarthmore, I don't know.

Attorney General Wyman: Now, Mr. Sweezy, did you give a lecture at the University of New Hampshire Monday, March 22, 1954?

The Witness: Yes.

Attorney General Wyman: What was the subject of your lecture?

Mr. Phinney: Object.

The Witness: I would like to say one thing in this connection, Mr. Wyman. I stated under oath at my last appearance that, and I now repeat it, that I do not advo- [fol. 59] cate or in any way further the aim of overthrowing constitutional government by force and violence. I did not so advocate in the lecture I gave at the University of New Hampshire. In fact I have never at any time so advocated in a lecture anywhere. Aside from that I have nothing I want to say about the lecture in question.

Attorney General Wyman: Very well.

Mr. Phinney: On the grounds——

The Witness: (Interposing) On the grounds that it is totally outside the scope of your inquiry, and that it is an invasion of Constitutional rights of free speech guaranteed under the First Amendment.

Attorney General Wyman: What was the subject of your lecture?

The Witness: I decline to answer for reasons just given.

Attorney General Wyman: Where did you give the lecture?

The Witness: At some hall there. I am not familiar with the campus.

Attorney General Wyman: How many were in attendance?

The Witness: Oh, I guess there must have been over a hundred.

Attorney General Wyman: At whose invitation did you give the lecture?

The Witness: Well, the invitation was from the staff of the Humanities Course conveyed to me by Professor Daggett.

Attorney General Wyman: When you say it was from the staff of the Humanities Course, do you mean to imply directly or indirectly that anyone at the University of New Hampshire other than Professor Daggett asked you directly or indirectly to come to the University to give a lecture?

The Witness: Yes, I do mean that.

Attorney General Wyman: Who asked you to come?

The Witness: Professor Daggett, but indirectly I mean to imply that others of that staff extended this invitation through him.

Attorney General Wyman: By that do you mean to imply that the faculty members at the University of New Hampshire on the staff in what division extended you the invitation?

The Witness: The staff that gives that particular course. I believe there are five of them associated.

Attorney General Wyman: Do you know who they are?

The Witness: I met three or four of them, but my memory for names is not good.

Attorney General Wyman: Did you meet them there on that day?

[fol. 60] The Witness: Some.

Attorney General Wyman: Were they in attendance at your lecture?

The Witness: At least one of them.

Attorney General Wyman: Professor Holden and

The Witness: (Interposing) Yes, I think so.

Attorney General Wyman: Any other professor?

The Witness: Not that I know of.

Attorney General Wyman: Did you receive a written request to give this lecture?

The Witness: Let me give you the background. This is the third year I have given this lecture, and each year after the first an informal invitation was extended afterwards to come back next year. All that was left was the fixing of the date, and this year it took the form of a brief note. I don't know just when I got it, but a couple of months ago, before the lecture.

Attorney General Wyman: Signed by Professor Daggett?

The Witness: Yes.

Attorney General Wyman: Did the note contain any reference to what you were to say at the University of New Hampshire or what your subject was to be?

The Witness: I don't think so. I don't remember that it did.

Attorney General Wyman: Do you have the note?

The Witness: I don't think so.

Attorney General Wyman: Would you be so kind as to look through your files; and if you have it, may I see it?

The Witness: I will look, but I don't save letters like that. I'm sure I don't.

Attorney General Wyman: And if you do find it, you will let me see it?

The Witness: Certainly.

Attorney General Wyman: Did you use any printed materials in connection with your lecture?

The Witness: I don't think so. You mean in connection with preparing it or giving it?

Attorney General Wyman: Did you carry physically into the lecture hall or room, as the case may be, anything in the nature of printed materials in assistance of your lecture?

The Witness: I had my brief case with me.

Attorney General Wyman: Do you have any memory of what was in that brief case in connection with printed materials?

The Witness: Oh, I'll look in here now if you want. [fol. 61] About the same as is in here now—usually a few copies of "Monthly Review."

Attorney General Wyman: There were some copies——

The Witness: (Interposing) There usually are. I am not saying exactly what was there then because I couldn't swear to it, but most likely there were.

Attorney General Wyman: Do you remember which copies you had with you?

The Witness: No. Most likely the latest ones.

Attorney General Wyman: Did you refer to the "Monthly Review" in your lecture?

The Witness: No.

Attorney General Wyman: Did you have with you this pamphlet on that day?

The Witness: I don't think so.

Attorney General Wyman: Well, do you know whether you had it with you or not?

The Witness: I told you I don't know what the contents of my brief case was, but I don't think I had it.

Attorney General Wyman: Do you have in your possession physically in the State of New Hampshire at the present time any more of these pamphlets?

The Witness: Two or three, I think.

Attorney General Wyman: Do you have them in your possession for distribution?

The Witness: No.

Attorney General Wyman: Do you have any of the issues of the "Monthly Review" or excerpts therefrom physically located in the State of New Hampshire anywhere for distribution?

The Witness: What do you mean for distribution?

Attorney General Wyman: Suppose I want to buy one from you. Can I buy one from you at Wilton?

The Witness: Sure.

Attorney General Wyman: Now, this pamphlet here, "Principles of Communism," do you remember when you prepared this new translation?

The Witness: Well, what is the date on there?

Attorney General Wyman: The date on the pamphlet is published 1952.

The Witness: Shortly before that.

Attorney General Wyman: Now, since this was published did you bring into New Hampshire some of these?

The Witness: Well, I don't know if I brought them. They were sent to me.

[fol. 62] Attorney General Wyman: At your instructions?

The Witness: Yes.

Attorney General Wyman: In the context of this publication—I would like to ask you first is this question and answer form in which the translation appears your own language?

The Witness: This is as near a literal translation as I could make. I think it is well explained in the preface.

Attorney General Wyman: In the preface, as you write, and I quote, "Engels shows a master's touch——"

Mr. Phinney: Excuse me. I think for the record you haven't indicated you are referring to the particular pamphlet entitled——

Attorney General Wyman: (Interposing) In the pamphlet "Principles of Communism by Friedrich Engels, A New Translation by Paul M. Sweezy, Published by Monthly Review, 66 Barrow Street, New York 14, New York, 1952, Monthly Review Pamphlet Series No. 4, Single Copy 25 cents, 5 Copies for $1.00; 30 Copies for $5.00" at page 3 in the Introduction, "Engels shows a master's touch in focusing the reader's attention and in getting across the central message of a new society in the making. This is no scholarly tract; it selects, emphasizes, exaggerates. As such it is as fresh and relevant today as it was more than a hundred years ago. The revolutions of 1848 proved abortive, and the greatest period of capitalist expansion was still in the future. Much that Engels wrote at that time was inevitably premature. But this only means that it is all the more relevant for us at a time when the tide of world revolution has already swirled over a large part of the earth and is daily rising higher despite the frantic commands of our twentieth-century Canutes."

Mr. Sweezy, you further talked in terms specifically of whether the peaceful abolition of private property will be possible by referring to Question 16, and in Question 16 at page 13 of this pamphlet the following appears:

"Question. Will the peaceful abolition of private property be possible? Answer. It would be desirable if this

could happen, and the communists would certainly be the last to oppose it. Communists know only too well that all conspiracies are not only useless but even harmful. They know all too well that revolutions are not made intentionally and arbitrarily, but that everywhere and always they have been the necessary consequence of conditions which were wholly independent of the will and direction of individual parties and entire classes. But they also see that the development of the proletariat in nearly all civilized countries has been violently suppressed, and that in this way the opponents of communism have been working toward a revolution with all their strength. If the oppressed pro- [fol. 63] letariat is finally driven to revolution, then we communists will defend the interests of the proletarians with deeds as we now defend them with words."

By that question and that answer in your translation did you mean to imply directly or indirectly that if the oppressed proletariat is finally driven to revolution thereby, that the interests of the proletariat would be defended with deeds as now with words?

The Witness: By that I simply meant to present the ideas Engels put forward. You can interpret it as you like.

Attorney General Wyman: "You can interpret it as you like," is that all?

(Mr. Eugene Patton came into the room.)

Attorney General Wyman: Is this again in this section as close to a literal translation as is possible?

The Witness: Well, I wouldn't say—I don't want to claim to be an expert translator. I think it is a literal translation.

Attorney General Wyman: Do you believe in the answer to Question 16, Mr. Sweezy?

Mr. Phinney: Objection.

The Witness: I don't think that a question of belief is relevant to this inquiry.

Attorney General Wyman: Do you decline to answer?

The Witness: Yes.

Attorney General Wyman: On what grounds?

The Witness: Grounds of irrelevance.

Mr. Phinney: May the record further show that at the earlier questioning of Mr. Sweezy on, I believe, January 8, 1954, the Attorney General at that point, conducting the questioning, stated that he had no intention or desire to get into the questions of belief.

Now, may I inquire whether that position has been changed?

Attorney General Wyman: For the record, the Attorney General is now decidedly interested in the question of whether any witness in the State investigation, including Mr. Sweezy, believes in Communism; and under the principles of Lawson vs. U. S. as defined by the Supreme Court of the United States, submits, as a matter of law, for the record, that the question of whether or not a witness believes in Communism or believes in language or actions which are in effect directly connected with Communism is a proper and relevant question in a delegated legislative investigation.

Mr. Phinney: Without attempting to deviate from the Rules of Procedure established by the Attorney General in these matters, I would like to point out that two things are being covered—actions and beliefs.

Attorney General Wyman: I will confine the particular [fol. 64] question strictly to whether this witness believes in the answer which is specified to Question 16 of the "Principles of Communism" as translated by him in 1952 at page 13 in the above-mentioned pamphlet.

The Witness: I would like to say one thing. I just couldn't answer that question in any case. Belief in a whole paragraph is a notion that I am unable to comprehend and respond to.

Attorney General Wyman: Do you believe in the negative theory of revolution as set forth in the answer to Question 16?

Mr. Phinney: For the record, objection on the grounds that the witness is being asked whether he believes in certain questions and answers given by Friedrich Engels some hundred years ago.

Attorney General Wyman: Well, first, do I understand that you decline to answer?

The Witness: Yes.

Attorney General Wyman: For the reason that it is not relevant?

The Witness: And is an invasion of the First Amendment rights.

Attorney General Wyman: And now, do you believe in Communism?

Mr. Phinney: Object for the same reason. He can answer if he wants to. I will instruct him not to answer for the same reasons, that what he believes or what he doesn't believe is a privilege which I believe still exists under the United States Constitution, at any rate, which, since 1920, does have some application over state actions.

The Witness: I decline to answer on advice of counsel for reasons stated.

Attorney General Wyman: By counsel?

The Witness: Yes.

Attorney General Wyman: And not on any Constitutional privilege against self incrimination?

The Witness: No. Let the record show again that I have never at any time claimed any privilege against self incrimination.

Attorney General Wyman: Are you the co-editor of "Monthly Review" in New York City?

The Witness: Yes.

Attorney General Wyman: Is your co-editor Leo Huberman?

The Witness: Yes.

Attorney General Wyman: Is he a member of the Communist Party?

[fol. 65] The Witness: No.

Attorney General Wyman: Has he ever been a member of the Communist Party?

The Witness: No.

Attorney General Wyman: Is this publication sold in the State of New Hampshire?

The Witness: You mean from a newsstand?

Attorney General Wyman: In any fashion to your knowledge, Mr. Sweezy?

The Witness: Well, there are some subscribers in New Hampshire. I believe Mr. Conner has subscribed to it.

Attorney General Wyman: There is on your mailing list

a certain number of subscribers in the State of New Hampshire?

The Witness: Yes.

Attorney General Wyman: Do you distribute yourself, physically, either gratuitously or otherwise, copies of the "Monthly Review" in New Hampshire?

The Witness: Not as a matter of routine. I suppose I have given copies to people in New Hampshire.

Attorney General Wyman: Do you remember whether or not you have ever given to anyone in New Hampshire the reprint from the "Monthly Review" published in 1953, your Pamphlet Series No. 6 entitled "The Jewish Problem in the USSR" and "On Trials and Purges" by the editors?

The Witness: I don't remember that I have. I don't say I haven't.

Attorney General Wyman: Have you ever, Mr. Sweezy, attended any meetings of the Communist Party within or without the State of New Hampshire?

The Witness: No.

Attorney General Wyman: Have you ever attended any meetings which were, whether or not official meetings of the Communist Party, which were attended by persons known to you to be Communist?

Mr. Phinney: May I have that question again?

(Question read.)

Mr. Phinney: Within or without the State of New Hampshire?

Attorney General Wyman: Yes.

The Witness: The answer to that is yes. I recollect a meeting, since the last time I was here, that I think would come under that category.

Attorney General Wyman: When was that meeting?

The Witness: That was probably '38 or '39. I am not [fol. 66] absolutely sure.

Attorney General Wyman: Where was that?

The Witness: That was somewheres around Boston. I will tell you the circumstances if you'd like me to.

At that time Granville Hicks—I think you have heard of him probably—was a fellow in American civilization at Harvard and was a Communist publicly so identified, in

fact was hired by Harvard in the knowledge he was a Communist; and one evening after some sort of a meeting —I don't recall the circumstances—I met Granville Hicks and was talking to him. He said come along to so-and-so's house. Phil Frankfeld, who was then a district leader in the Boston area, was going to be there; and I'd like to have you meet him. I went along with him and spent the evening talking, and I know that Granville Hicks and Frankfeld were both Communists. It wasn't a formal meeting, just a social gathering.

Attorney General Wyman: Any discussion of overthrow of the Government by force and violence at that meeting?

The Witness: Not that I recall.

Attorney General Wyman: Were you ever a member of the Communist Party in the early '30's?

The Witness: I have never been a member of the Communist Party at any time.

Attorney General Wyman: Did you ever hold or receive or take a card for any period of time?

The Witness: I have never even seen one.

Attorney General Wyman: This is following, now, the question which you originally declined to answer on advice of counsel. Have you ever made the statement to anybody that you believed in Communism?

Mr. Phinney: Object again for the same reason.

The Witness: Decline to answer for the same reasons.

Attorney General Wyman: Is Mrs. Ruth Jones Daggett, Gwynne Daggett's wife, to your knowledge a member of the Communist Party?

The Witness: No.

Attorney General Wyman: Has she ever been a member in the past to your knowledge? Have you ever heard it discussed?

The Witness: Not that I know of.

Attorney General Wyman: Didn't you tell the class at the University of New Hampshire on Monday, March 22, 1954, that Socialism was inevitable in this Country?

The Witness: I decline to answer any question about the content of my lecture at the University of New Hampshire.

[fol. 67] Attorney General Wyman: What grounds?

The Witness: Grounds that it is irrelevant to the scope

of your inquiry and an invasion of First Amendment rights.

Attorney General Wyman: Assuming for the purpose of this question that you had answered the previous question, I am asking you now for any explanation or answer you may desire to give. Is the kind of Socialism that you advocate in your "Monthly Review" and otherwise the type of Socialism which can exist and does exist only in a country after it has fallen to Communism?

The Witness: No.

Attorney General Wyman: Will you explain in what respects it differs from Communism?

Mr. Phinney: This, of course, is apparently requesting this witness to reply as to his opinion perhaps his beliefs. If he can answer it, I don't have any objection, although it is objectionable for that reason.

Attorney General Wyman: I will interject one statement, that I am entirely sure the witness is entirely capable of answering; but if the witness does not wish to answer this question in view of his previous declination, I will withdraw this question from the record.

The Witness: I don't say I can answer it in full. I think it is a very comprehensive question, but at least by analogy I think I can answer it in such a way as to clarify the point.

Attorney General Wyman: You understand the question?

The Witness: I do. If I don't seem to be addressing myself to the question, please interrupt me.

Attorney General Wyman: What is the difference between the Socialism you advocate and Communism?

The Witness: Let me proceed.

Attorney General Wyman: Go ahead.

The Witness: In this Country, for all practical purposes, there isn't any Socialist movement. So it is hard to explain to people in terms of things they are familiar with and understand; but I guess most of us have some knowledge of Britain, and perhaps we can make things clear in terms of the British situation.

If I were in Britain today, I would be a member of the British Labor Party and one of the so-called Bevanites. The Bevanites, as I understand their doctrine, believe in Socialism in the same sense I do and believe it is possible

for it to be achieved constitutionally under the British Constitution and with a preservation of traditional civil liberties.

That is the position I believe in and would work for; and I would do it in an organized movement, if there were one, [fol. 68] in this Country, which was going that way, too.

Now perhaps this will help to clarify the position.

Attorney General Wyman: Are you a Marxist?

Mr. Phinney: There again the question obviously calls for an answer involving beliefs, however softly uttered.

The Witness: Yes, it does; and yet, of course, the purpose of putting it on the record is to prejudice the record against me. I recognize that, and I am not answering it.

Attorney General Wyman: All right, just a minute. At this point in the record at page 164 of the "Monthly Review" of 1953 I note that your co-editor, Mr. Huberman, in reply to a question by Senator Mundt answered: "Senator Mundt: You are a Marxist and a Socialist? Mr. Huberman: That's right."

Mr. Phinney: May I call the Attorney General's attention to the fact that this is Mr. Sweezy and not Mr. Huberman present.

Attorney General Wyman: I think the record will show the reason for this question when we get to a publication of the editors a little later on. Mr. Sweezy has testified here that Mr. Huberman, so far as he knows, is not a Communist.

In the extract of testimony which is printed in his own "Monthly Review" before a Congressional Committee of July 14, issue of August 1953, Volume 5, page 164——

Mr. Phinney: (Interposing) Excuse me. For accuracy's sake, the "Monthly Review" of which he is co-editor?

Attorney General Wyman: Of which he is co-editor, correct, with Leo Huberman. Now, in view of that I again ask you softly, if the language of your counsel is apt, are you a Marxist?

The Witness: Would you care to define what you mean by that?

Attorney General Wyman: No, sir. I am sure that my knowledge of both the theories and full meaning of Marx-

ism and Socialism are not as broad as yours. I wish to know if you are a Marxist?

The Witness: I consider myself a Marxist, yes.

Attorney General Wyman: Explain.

The Witness: But what that means, Mr. Wyman, is set forth in all of my writings for the last fifteen years practically, and I would not attempt to explain in a few words what being a Marxist means to me. After all, I have spent a lot of time explaining it in print.

Attorney General Wyman: In the "Monthly Review" reprint, Pamphlet Series No. 6, there appears—this is in 1953—a review of the month on trials and purges by the editors, and at the conclusion of that particular epistle, the editors, Paul M. Sweezy and Leo Huberman. Did you write [fol. 69] that review of the month?

The Witness: We wrote it together.

Attorney General Wyman: Now, at the expense of laboring for just two or three minutes, I wish to read to you four paragraphs from this particular excerpt; and then I am going to ask you whether or not any of this material was with you at the University of New Hampshire. Pages 42 and 43.

"In which country, within the last few months, did a presidential candidate promise peace and immediately upon taking office set about spreading war?" Omissions.

"And as regards the leaders of the two camps, it is certain that in the last eight years the United States has been responsible for killing a vastly greater number of human beings than has the Soviet Union.

"We would not argue, however, that the quantitative question, even if it were possible to answer it with precision, is the crucial one. In the last analysis, those who hate violence must judge it by an entirely different standard—they must ask whether violence is used to perpetuate a state of affairs in which violence is inevitable, or whether it is used in the interests of creating a truly human society from which it will be possible at long last to banish violence altogether.

"So far as the United States and its allies are concerned, there is unfortunately no doubt about the answer. Our Country is preparing to practice violence on a hitherto

undreamed-of scale to preserve a social order which in the space of four decades has already produced the greatest orgy of violence in the whole long and violent history of the human race. Capitalism, the organization of society according to the barbaric principle of private profit, is the scourge of mankind; and violence designed to preserve it is doubly damned, once for itself and once for its purpose.

"Those of us who have socialism in our bones, who believe that a truly human society can be erected only on the basis of common ownership and economic planning, must necessarily judge the violence of the socialist countries differently. We hate it, as we hate all violence; we would have vastly preferred to have the building of the new economy take place peacefully and painlessly, as it could have if the advanced countries had led the way. But history—which, as Friedrich Engels once said, is a most cruel goddess—decreed that the economic foundations of the society of the future must be laid in backward countries, not only without the assistance of the advanced countries but against their ruthless and implacable resistance. It was thereby rendered inevitable that the process should be difficult, painful, and violent. But the process does go forward—of that the majestic successes of the Soviet economy, despite all the strains and trials to which it has been sub-[fol. 70] jected in these years of Hot and Cold Wars, is irrefutable proof—and the hopes of mankind for a better future go with it. For the first time in history we can say that violence is being used to protect regimes which are doing their utmost to create a society which will be able to dispense with violence. That makes all the difference."

Mr. Sweezy, did you have this with you at the University of New Hampshire?

The Witness: I don't think so.

Attorney General Wyman: By this writing, which I recognize speaks for itself, do you thereby advocate that violence in favor of or support of the Soviet Union is justified?

The Witness: No, certainly not.

Attorney General Wyman: When you——

The Witness: (Interposing) I don't mean to say anything more than it says.

Attorney General Wyman: When you say that in this first time in history we can say that violence is being used to protect regimes which are doing their utmost to create a society which will be able to dispense wtih violence, are you not talking about Russia?

The Witness: Not only Russia.

Attorney General Wyman: What other country?

The Witness: China.

Attorney General Wyman: Red China?

The Witness: China.

Attorney General Wyman: Not Nationalist China?

The Witness: That's Formosa.

Attorney General Wyman: May it be agreed his answer is China as distinguished from Formosa?

Mr. Phinney: I agree that his answer is what his answer was. It is probably on the record, Mr. Nolin being a competent stenographer.

Attorney General Wyman: Very Well.

When you say that it is inevitable that the process shall be difficult, painful, and violent, you mean the process of transition from Capitalism to Socialism, do you not?

The Witness: Is the tense "shall" there? Is it "Will be?"

Attorney General Wyman: "Should be difficult, painful, and violent."

The Witness: I think it already has been.

Attorney General Wyman: Did you tell the class at the University of New Hampshire that Socialism was inevitable?

The Witness: Refuse——

Mr. Phinney: (Interposing) Objection for the same rea-
[fol. 71] son stated for the same question before.

The Witness: Refuse to answer on the grounds stated.

Attorney General Wyman: If you did tell the class that, is that not advocacy?

Mr. Phinney: Read the question.

(Question read.)

The Witness: I think to answer the question in that form prejudices the case.

Attorney General Wyman: You may answer it in any form you wish.

The Witness: You can ask the question: Is saying something is inevitable, advocacy? I will answer that as a general proposition.

Attorney General Wyman: Very well. I have no desire to prejudice you here today any more than your own writings and answers may or may not do so.

The Witness: Good.

Attorney General Wyman: Now, if you stated to the class that Socialism of the type for which you stand which, I take it, is Marxian Socialism, is that correct?

The Witness: I don't think there is any such thing as Marxian Socialism as a form of society.

Attorney General Wyman: You know more about it than I do. Would it be fair to say Marxism?

The Witness: No. Marxism is a body of doctrines about society, history, and philos-phy. It is not a form of society; never so understood by Marx or any competent Marxist.

Attorney General Wyman: I now ask you if you told the class at the University of New Hampshire anywhere that the type of Socialism you stand for is inevitable or any type of Socialism is inevitable, is that objective teaching?

The Witness: Let me elucidate that this way. One of my teachers—and later, when I was on the faculty, colleague—one of the most distinguished economists of our time, if not the most distinguished, Professor Joseph A. Schumpeter, repeatedly wrote and stated and taught in his classes that Socialism was inevitable. He was an extreme conservative himself, did not approve of it at all; but this was his own scientific conclusion from his own research and thinking. If you want to check it, you can read it in his book, "Capitalism, Socialism, and Democracy" among others. I was influenced by Schumpeter before I ever became a Marxist.

I think this is an adequate answer to your question. In other words, one can think something is coming and either like it or not like it.

Attorney General Wyman: But if he states it is in- [fol. 72] evitable, does he not thereby deviate from fact to opinion in the classroom?

The Witness: He states it is his opinion it is inevitable.

Presumably students are not so stupid as to believe everything professors tell them, and half the things you say are your opinions from your researches, and so on. I suppose you don't say, everytime you get up in front of the class, it is my opinion or conclusion.

Attorney General Wyman: Mr. Conner, will you state for the record at this time, according to our files, the various Communist front organizations cited, and only those cited either by the House Committee on Un-American Activities or the National Attorney General as Communist or subversive, that our files indicate Paul M. Sweezy has either supported or been associated with?

Mr. Phinney: These are organizations——

Attorney General Wyman: (Interposing) On the National Attorney General's list or officially described by the House Committee on Un-American Activities as either subversive or Communist.

Mr. Phinney: Using whatever standards they use?

Attorney General Wyman: Absolutely so. Wait a minute. So that there may be no error, subversive is, as the Attorney General has used it, broader than Communist. There are four categories in the Attorney General's listings—subversive, Communist, totalitarian, and Fascist. In order to have an organization officially cited now and required to register, as I understand it, they must have a hearing at which the organization is required to show cause why it should not be cited. For the last several years the Attorney General's list has contained a number of subversive organizations, a number of Communist organizations, and a very much lesser number of totalitarian and Fascist organizations.

I am not asking Mr. Conner merely to advise of the organizations with which Mr. Sweezy, the record indicates, such as we have it, that Mr. Sweezy has either supported or been associated but only those that appear either on the National Attorney General's list or on the House Committee citations.

Mr. Phinney: As I understand—I guess I am wrong—I thought that the primary concern was in connection with subversive as defined by the 1951 New Hampshire Legislature.

Attorney General Wyman: For the further information of the record, because it is so important, it is submitted that as a matter of law in New Hampshire, the Communist Party, by virtue of the preamble to the laws of 1951, Chapter 193, is subversive within the formula therein set forth and that membership in the Communist Party is membership in a subversive organization, but it does not become [fol. 73] criminally felonious unless the person who is a member actually knows or is found by a jury to know that the purpose of the Communist Party is the overthrow of the Government by force and violence.

Each one of the organizations on these lists are cited either as subversive or Communist, and I am trying to act in this investigation to determine to what extent they have been supported knowingly or not by individuals in this State for the reason that that activity apparently is proscribed by the 1951 statute.

The Witness: Mr. Wyman, may I ask that Mr. Conner indicate the dates of the evidence?

Attorney General Wyman: This is not evidence, Mr. Sweezy. I am only asking him to list——

The Witness: I would like the record to show the dates of the information which is in your file.

Attorney General Wyman: Yes, we will do that. I want the list in the record at this time so as to be able to ask you two or three questions about these specific organizations, and therefore will you list them, Stuart?

The Witness: One more moment. I think I told you last time that as far as I know, I am not a member of any of these organizations at the present time; and I would like to have the record show when I was. I think it is only fair since your Legislation has a very definite date on it.

Attorney General Wyman: We'll have the list show, and you may point out anything you wish.

The Witness: I don't know where you got your information from. Seems to me you should include this date.

Attorney General Wyman: I read it to you, a lot of it, at the last hearing.

The Witness: No. You read the date at which these organizations were declared or listed as subversive.

Attorney General Wyman: Correct, but I also, I think, asked you in connection with the years you acted or——

The Witness: (Interposing) In some cases. Now, when this whole list——

Attorney General Wyman: (Interposing) Very well; and if there are any organizations as to which there are no dates, I will ask you concerning the dates.

The Witness: Let it show.

Mr. Phinney: If this is possible, not to prolong this, in view of the Attorney General's statement with regard to Communist activity being subversive as a matter of law by virtue of the 1951 Act,——

Attorney General Wyman: (Interposing) Preamble.

[fol. 74] Mr. Phinney: —could we have, if we can, Mr. Conner indicate those organizations which are said to be or cited for being Communistic and those which are cited for being subversive?

Attorney General Wyman: Yes, sir. I don't think any of them are being cited as being subversive. I think they are all Communist controlled.

You put in the record at this time what the information is, that is all.

Mr. Conner: Citizens Committee for Harry Bridges, 1941.

Mr. Phinney: That is the date of the citation?

Mr. Conner: That is the date of the association or affiliation. I am not going to put the date of the citation in.

Attorney General Wyman: Wait a minute. On the record, when you say you are not going to put the citation date on there, it is understood for the purpose of this list that these organizations have been cited either by the House Committee on Un-American Activities or the National Attorney General.

Mr. Conner: I will even put the name of the citing organization.

Attorney General Wyman: Go ahead.

Mr. Conner: The Citizens Victory Committee for Harry Bridges, 1943. Would you like the organization citing these?

Attorney General Wyman: I would.

Mr. Conner: The first one was the United States Attorney General. The second one was the House Committee on Un-American Activities.

A Committee in Defense of Carl Marzani, 1947, U. S. Attorney General; the Scientific and Cultural Conference for World Peace, 1949, House Committee on Un-American Activities; National Council of the Arts and Sciences, 1950, the House Committee on Un-American Activities; the World Peace Conference held in Paris, 1950-51. That was the House Committee on Un-American Activities. There was an open letter which was in support of the bail fund of the Civil Rights Congress. The Civil Rights Congress has been cited by the House Committee and the Attorney General.

Mr. Phinney: What was the date on that?

Mr. Conner: I said 1950 and 1951.

Mr. Phinney: I see.

Mr. Conner: I am sorry. That was 1951, October 30. National Council of American-Soviet Friendship cited by both the House Committee and the U. S. Attorney General. I will have to look up the date on that. Just a moment. We will return to that. The Joint Anti Fascist Refugee Committee, 1944, 1947, 1948, cited by the U. S. Attorney General. An open letter to American liberals which was [fol. 75] published in "Soviet Russia Today," which I believe is an official publication of the Soviet Embassy, cited by the House Committee. Innumerable subscriptions to "Science and Society," a Marxist publication, over a period of roughly fifteen years from the late '30's to the mid '40's, cited by the House Committee. Committee on Peaceful Alternatives to the Atlantic Pact, 1951, cited by the House Committee. Participation in a function of the National Lawyers Guild in 1953, and apparently in 1944, cited by the House Committee.

Mr. Phinney: What was it? Perhaps the stenographer can read back.

(Statement read as follows: "Participation in a function of the National Lawyers Guild in 1953, and apparently in 1944, cited by the House Committee.")

Mr. Phinney: Would it be fair to ask for any further clarification of that participation in some function of the National Lawyers Guild?

Attorney General Wyman: We'll have to take a short recess.

(Short recess.)

Mr. Conner: The "Daily Worker" on February 20, 1953, page 6, reported Professor Paul Sweezy was to speak at a panel on "The Domestic Economy" at the annual convention of the National Lawyers Guild at the Park Sheraton Hotel, New York City, February 20, 23.

Attorney General Wyman: That is referred to by you simply because the National Lawyers Guild has now been cited?

Mr. Conner: Mr. Phinney wanted a clarification.

Mr. Phinney: I have the function now. As I understand it, your information is that the "Daily Worker" carried a story to the effect that Mr. Sweezy or, as he was called, Professor Sweezy was to address the National Lawyers Guild on "The Domestic Economy"?

Mr. Conner: That is right.

Mr. Phinney: All right.

Mr. Conner: In 1948 Mr. Sweezy was listed one of a number of persons who were defending the "Fraternal Outlook," the official publication of the International Workers Order which was apparently under some fire at that time. The International Workers Order has been cited by the House Committee and the Attorney General.

Mr. Phinney: At that time, I take it,——

Mr. Conner: (Interposing) I will get the date here. I am sure it must have been then. The Attorney General cited it in 1947. It was first cited in 1942 by the Attorney General, so forth.

I believe that will conclude the list.

Attorney General Wyman: Mr. Sweezy, before asking [fol. 76] you about the list just read, are you presently active for the Refugee Appeal of the Joint Anti Fascist Refugee Committee?

The Witness: No.

Attorney General Wyman: Are you familiar with that organization?

The Witness: Is that the Spanish——

Attorney General Wyman: Yes, Spanish Refugee Appeal.

The Witness: I am familiar in a general way. I have no detailed information about it.

Attorney General Wyman: You have not, however, joined the Committee or otherwise aided or contributed to the Spanish Refugee Appeal as it exists at the present time?

The Witness: I can't recollect that I have; although it is perfectly possible if I got a request for funds, I might have responded to it within the last year or so. I just don't remember.

Attorney General Wyman: Since August 1, 1951, have you supported any of the organizations just referred to directly or indirectly?

The Witness: Yes. I am still on the sponsoring list of the National Council, or whatever it is called, of the National Council of the Arts, Sciences, and Professions. I was surprised to hear that had been cited.

Attorney General Wyman: Do you consider yourself a member of the National Council of Arts, Sciences, and Professions?

The Witness: Well, as a matter of fact, I just recently wrote a letter resigning from that committee as of the end of the present term.

Attorney General Wyman: Which will be when?

The Witness: I don't know.

Attorney General Wyman: Sometime in the future though?

The Witness: Whenever they come to elect new officers.

Attorney General Wyman: Are you familiar with the purposes and objectives of the National Council of the Arts, Sciences and Professions?

The Witness: Yes.

Attorney General Wyman: As you know, under our Act in New Hampshire a subversive organization, as such, is labeled as one which has for a purpose the overthrow of the Government by force and violence. Does the National Council of the Arts, Sciences, and Professions have as a purpose such overthrow?

The Witness: No.

[fol. 77] Attorney General Wyman: Is the National Council, referred to as Nascap—I guess that is the way they call it—is it controlled by Communists to your knowledge?

The Witness: Not that I know of.

Attorney General Wyman: Do you know any Communists who are members of the National Council?

The Witness: No.

Attorney General Wyman: You, in your own statement to me sometime ago brought in here voluntarily by you and appended at your request to the original transcript, I think, made the statement that you knew many wholly sincere——

Mr. Phinney: I'd like to object right there. That is not what he said.

Attorney General Wyman: Well, all right, let's find what he did say.

Mr. Phinney: That is an excellent idea. I think I know what you are referring to. Page 47 of the record, last paragraph: "Mr. Sweezy: I think there is a great deal of misunderstanding about Communism. This is a historical force that is here to stay, and this Country is going to get used to living with it, if not at home, at any rate abroad, because there is no possibility of this Country's or the Soviet Union's annihilating the other. There are too many wholly sincere, admirable people who are Communists; and my own belief is if we can establish peace between the two systems, Communism will evolve in a direction which is much less objectionable to people in this Country."

Attorney General Wyman: "To people in this Country."

Mr. Phinney: Yes.

Attorney General Wyman: Now, Mr. Sweezy,——

Mr. Phinney: (Interposing) Excuse me. You said "you knew."

Attorney General Wyman: I see. All right.

You made the statement that there are many wholly sincere, admirable people who are Communists. Do you know any individuals anywhere in the world who meet that formula?

The Witness: Yes.

Attorney General Wyman: Who? Will you name them?

The Witness: Well, the one that comes to my mind at the

moment is a don at Cambridge University by the name of Maurice Dobb.

Attorney General Wyman: In England?

The Witness: England. M-a-u-r-i-c-e Dobb.

Attorney General Wyman: Any others that you know?

The Witness: Personally?

[fol. 78] Attorney General Wyman: Yes, sir.

The Witness: I know very few Communists as such.

Attorney General Wyman: Do I understand you made the statement, "There are many wholly sincere, admirable people who are Communists" on your knowledge of Maurice Dobb?

The Witness: No. This is my opinion.

Attorney General Wyman: I am not asking for opinion in this question at all. I am asking you simply who the people are, by name, that you referred to in your answer on page 47 of the original transcript?

The Witness: I didn't refer to anybody by name. This is a conclusion from a study of Communism and the history of the last three or four decades.

Attorney General Wyman: Is there any other individual that you know of in the world anywhere who is a Communist and who is also wholly sincere and admirable?

The Witness: You mean personally known to me, or my opinion?

Attorney General Wyman: Either way you want it.

Mr. Phinney: Let's have it both ways then.

Attorney General Wyman: First personally known to you.

Mr. Phinney: May I interpose this thought, too, without any way objecting? I suppose that even personally known to him necessarily calls for his opinion. That is what you are really asking him, for his opinion that they are wholly sincere and admirable.

Attorney General Wyman: I'd like to stick to the rules and confine comments to objections. I am simply trying to find out who these people are.

The Witness: I was not referring to specific individuals. I didn't have that in mind. What I have in mind is that in every country in the world there are Communists. In some countries a large proportion of the population are Communists. My interpretation of Communism is not

that this is a band of devils, but a large section of the population much like other sections and containing people who are wholly sincere and admirable as other sections do.

Attorney General Wyman: Is there any Communist anywhere in the world, who is a Communist in the Russian sense of the word, who is not committed to the overthrow of this Capitalist Government by force and violence?

The Witness: I certainly think there are lots of them.

Attorney General Wyman: Do you know any?

The Witness: I don't know. You are asking me my opinion about Communism. I have studied it much more than I have investigated it in person. I have studied lots [fol. 79] of books and read lots of histories. Are you suggesting this is in some way illegitimate?

Attorney General Wyman: I am not asking you anything except whether or not any Communist anywhere in the world, who is a real Communist, can by definition support anything other than the overthrow of the Capitalist system by force and violence if necessary?

The Witness: This is in my opinion the kind of oversimplified hysteria type of thing that is all too common in this Country today, and I don't go for it.

Attorney General Wyman: I asked a question. I think the question is fairly clear.

The Witness: Read the question again please?

(Question read.)

Mr. Phinney: If he knows.

The Witness: I think it is quite possible for a Communist not to have such intentions and purposes.

Attorney General Wyman: Do you know any Communists who do have such intentions and purposes?

The Witness: No.

Attorney General Wyman: You said——

Mr. Phinney: (Interposing) Excuse me. Do I understand the meaning of your question as do you know any Communists who do have the intention of overthrow of Capitalism by force and violence?

Attorney General Wyman: Do you know personally any Communists who do not have the intention of overthrow of the Capitalist system by force and violence?

The Witness: Let me put on the record again that personally I know very few Communists as such. I know quite a few people who may perfectly well be Communists and enough of them over a period of years so that I think I have some idea of what Communists think like and act like, but they are people whose membership in the Communist Party is not personally known to me; and for obvious reasons I would not testify about them as Communists without knowing.

Attorney General Wyman: Well, sticking again to what you do know in the realm of fact, you say, "I know very few Communists." Who do you know who you know to be a Communist, other than Maurice Dobb?

The Witness: Well, I'd—I said last time I met Foster and Browder, and this time we have added Granville Hicks and Frankfeld.

Attorney General Wyman: Do you know these people well enough to know whether or not they advocate the overthrow of the Government by force and violence?

[fol. 80] The Witness: No.

Attorney General Wyman: So it would not be these people upon which you would formulate the statement there are many wholly——

The Witness: (Interposing) It would be much more on the basis of my reading.

Attorney General Wyman: You can't name here any other person than Maurice Dobb who would fall within the many wholly sincere, admirable people who are Communists?

The Witness: Personally known to me as Communists, is that what you mean?

Attorney General Wyman: I mean in the context of the statement as made at page 47 of the transcript. You see, Mr. Sweezy, I am sure that, speaking for myself at least, many of the imponderables of our time are involved in the answer to that question; and it seems to be at least the prevailing weight of opinion, in fact almost the unanimous opinion so far as I know, today, of every responsible agency of Government, as well as some responsible leaders, that any Communist anywhere, who is a Communist in the Russian Communist sense of the word, is an active sub-

versive agent seeking to destroy us. Therefore, it is quite important to know who the people are that you refer to as wholly sincere and admirable people who are Communists.

The Witness: The answer, Mr. Wyman, is that I don't believe that just because all these responsible Government agencies and officials hold it, there is no obligation in this Country for me to believe what the Government believes. I have my own interpretation. I have done a good deal of study in my time and have drawn conclusions during that time.

Attorney General Wyman: We were on the Spanish Refugee Appeal, and then we moved to Nascap. Since August 1, 1951, have you supported any of these organizations directly or indirectly?

The Witness: I don't think so.

Attorney General Wyman: Have you given any money to them?

The Witness: As I said, I might have given money to the Refugee Committee, but I don't remember it.

Attorney General Wyman: Are you a member of any of them today other than the National Council?

The Witness: Most of those are not membership organizations anyway. Most of those citations are simply having signed a communication of some sort or other. To the best of my knowledge, I am not a member of any of them and would not be so construed to be in any intelligent sense of the word membership; but as you well recognize, that [fol. 81] is a highly vague concept, and I don't want to say something that a legalistic interpretation might find inaccurate.

Attorney General Wyman: Well, do you have regular correspondence with any of these organizations today?

The Witness: No.

Attorney General Wyman: Do you have irregular receipt of printed matter from any of these organizations today?

The Witness: As far as I can recall the list, I don't know of any printed matter they send out. Let me say the National Council, I do get their mimeographed reports of the meetings of their National Board, yes; but that, we agreed, I am still a member of.

Attorney General Wyman: In your talks with Elba

Chase Nelson since August 1, 1951, has she passed any publication or printed material whatever to you by hand at any time?

The Witness: Any printed material?

Attorney General Wyman: Any printed material, any piece of paper, any publication whatever by hand.

The Witness: Not that I can remember.

Attorney General Wyman: Has Charlie Nelson passed it to you by hand?

Mr. Phinney: Excuse me, Charles Nelson?

Attorney General Wyman: Elba's second husband.

The Witness: No. I'd be certain he hasn't, because I hardly spoke to him.

Attorney General Wyman: Are you sure that Elba has not given you anything by hand since August 1, 1951?

The Witness: She showed me a letter. I can remember that. It had to do with her getting counsel for this investigation. Whether she actually passed it to me by hand——

Attorney General Wyman: (Interposing) I don't mean——

The Witness: (Interposing) She has never given me anything you asked for.

Attorney General Wyman: Any literature on the subject of Communism directly or indirectly?

The Witness: No. This I am perfectly certain of. I have already testified, I believe, that the meeting to which you are referring had to do with her interest in getting counsel for this inquiry and talking over her problems for this inquiry.

Attorney General Wyman: I am going to read to you very briefly excerpts from sworn testimony from a witness in the investigation whom you know because of a question I want to ask you. This is pages 26 and 27 of his transcript: "Question: And you mentioned Professor Daggett of the University attended some Progressive Party meetings. [fol. 82] Has Professor Daggett engaged in any activities on behalf or for the benefit of the Communist Party? Answer: Not to my knowledge; he may have, but not to my knowledge. Question: Do you know of any specific activities on his part, which would inicated any association or sympathy with Communism? Answer: As I recall, he did

quite a lot of work in the Progessive Party. Whether that was because he was a Communist, I don't know. Usually the Communists do most of the work in these organizations. Question: When you say that it was usually the Communists that did most of the work—— Answer: That is the impression that I got since I myself didn't do very much. In this Progressive Party business they tried to get me in on some of the activities and I did come up to one meeting but I noticed that there were certain people that were always doing something. Question: Those were the Communists? Answer: Maybe it was just a notion of mine but I had a notion that they would get out and do the work. Question: Is it your opinion that the Communists were active in the Progressive Party? Answer: Yes, it was."

Mr. Sweezy, were Communists active in the Progressive Party in this State?

Mr. Phinney: Objection for the reasons previously stated; that is to say, the Progressive Party, as far as has been stated, at the present time is a perfectly legal organization.

Attorney General Wyman: I stand on the question.

The Witness: I decline to answer for the reasons stated—lack of relevance to the inquiry.

Attorney General Wyman: Mr. Sweezy, do you know whether or not the Progressive Party, as it existed in New Hampshire, was merely a shield manipulated and helped by the Communists in New Hampshire?

Mr. Phinney: I think you should answer that.

The Witness: It certainly wasn't while I had anything to do with it.

Attorney General Wyman: Now, I must ask you do you know of your own——

The Witness: (Interposing) Let me expand a little on that. There wasn't anybody manipulating it as far as I was aware of its operations. It was a perfectly normal group. To be sure, some people did a lot more work than others, but I think that is not exactly exceptional. I was not aware of anybody attempting to manipulate; and as far as the relations with the National office was concerned, I handled them more myself than anybody else, so I think I have a pretty good idea of what was going on there.

Attorney General Wyman: Now, I must ask you do you know of your own knowledge whether or not any Communists were active in the Progressive Party in New Hamp-
[fol. 83] shire in 1947, 1948, and after?

The Witness: No. I have already stated that. I want to amplify that by saying I already stated I don't know of my own knowledge of Communists in New Hampshire.

Attorney General Wyman: Was Charles Beebe active in the Progressive Party in New Hampshire?

Mr. Phinney: I think an objection should be taken to that on the grounds that the Progressive Party is a legally organized party with presumably a large membership, and an answer to it calls for something beyond the scope of the inquiry.

The Witness: I decline to answer on the grounds of irrelevance.

Attorney General Wyman: Was George H. Edson active in the Progressive Party or in the formation of the Progressive Citizens of America?

The Witness: I——

Mr. Phinney: (Interposing) Same objection.

The Witness: Decline to answer for the same reasons.

Attorney General Wyman: I am now going to ask you about a number of individuals the same question—were they active in the Progressive Party and/or in it with your wife.

Elba Chase Nelson?

The Witness: Decline to answer. I think I answered that earlier, didn't I?

Mr. Phinney: I don't know.

Attorney General Wyman: I certainly am not going to ask any court to rule on any question which you answered in substance previously.

Charles William Armstrong, Jr.?

The Witness: Could I consult with counsel?

Attorney General Wyman: Yes.

Mr. Sweezy, in asking you this list here, if there is anybody in there you don't know, you never heard of them, you don't know who they are, just say so and that will take care of it. Obviously if you don't know them, then it is impossible, I would think, for you to know whether or not they have been active.

Charles. Wile?

The Witness: The name doesn't mean anything.

Attorney General Wyman: Hugh Warren Thompson?

The Witness: I don't know the name.

Attorney General Wyman: Wayne Doust?

The Witness: Don't know the name.

Attorney General Wyman: Paul Martineau?

[fol. 84] The Witness: Decline to answer on the same grounds.

Attorney General Wyman: Crandall R. Wallenstein?

The Witness: I don't know him.

Attorney General Wyman: Seymour Sargent?

The Witness: I know him. I should like to say about Paul Martineau that I do know him, and the same answer for Seymour Sargent. I decline to answer about any activities in the Progressive Party.

Attorney General Wyman: A footnote on Seymour Sargent. Is he now a member of the Communist Party?

The Witness: I don't know.

Attorney General Wyman: Was he a year ago?

The Witness: I don't know.

Attorney General Wyman: Hulda Hill?

The Witness: The name is familiar, but I am not quite sure in what connection.

Attorney General Wyman: Oliver Williamson?

The Witness: The Milford police chief?

Attorney General Wyman: Yes.

The Witness: I decline to answer.

Attorney General Wyman: Jacob Eida?

Mr. Phinney: I think the consistent thing——

The Witness: (Interposing) I don't know Williamson personally. He has tagged my car in Milford.

Attorney General Wyman: Victor DeNauw?

The Witness: Yes, I know Victor DeNauw; and I decline to answer relative to Progressive Party activities.

Attorney General Wyman: Did I ask you George Edson?

Mr. Phinney: Yes.

The Witness: You did. I don't know him.

Attorney General Wyman: John R. Maki?

The Witness: I know a man named Maki, but I don't know the first name.

Attorney General Wyman: Elton Gustafson?

The Witness: I know him, and I decline to answer relative to Progressive Party activities.

Attorney General Wyman: C. H. Townsend?

The Witness: Don't know him.

Attorney General Wyman: James O'Donnell?

The Witness: The name sounds familiar, but I can't place it.

Attorney General Wyman: Edward Dobrowolski?

The Witness: There again the name sounds familiar, but [fol. 85] I can't place it. Maybe I read it in the paper recently.

Attorney General Wyman: Gustavo Duran?

The Witness: Yes, I know him, but never in connection with any activities in New Hampshire.

Attorney General Wyman: Is Gustavo Duran physically in New Hampshire?

The Witness: I don't think so now. He has come up from time to time to visit his mother-in-law.

Attorney General Wyman: Was he a general in the Abraham Lincoln Brigade in the Spanish War?

The Witness: No.

Attorney General Wyman: Was he an officer?

The Witness: No. He was a Spaniard. He was in the Spanish Army. He only came to this Country after the Spanish Civil War.

Attorney General Wyman: Off the record.

(Discussion off the record.)

Mr. Nelson: How do you know whether Gustavo Duran came after the Spanish Civil War?

The Witness: How do I know it? It is just one of those things I have heard. It is a piece of information that I have had for a long while.

Mr. Nelson: Regardless of where he was born, do you know whether or not he was a resident of or a citizen of the United States prior to the hostilities in Spain?

The Witness: I think not. The way I understand—I don't want to pose as an expert—my understanding is he was a Spaniard.

Mr. Nelson: Whether by birth or descendance, you have

no way of knowing, you can't tell us definitely he went from this Country to Spain to participate in those hostilities?

The Witness: I would be surprised if that were the case. My understanding is that he was born and raised in Spain and in the Civil War, fought on one side, and subsequently that side lost, and he left the Country and one way or another made his way to this Country.

Mr. Nelson: Is he a Communist?

The Witness: I don't know.

Attorney General Wyman: I want to say on the record to Mr. Phinney that in the origination of these proceedings today, when I spoke of the Rules of Procedure, any time you wish, not only to make your objections, but understand that it appears that something in the record is not adequately presented as respects your client, I wish you would advise me.

Mr. Phinney: I plan to do that after you finish your question. There are a couple of points I want clarification on. If I forgot the Rules of Procedure, it seemed to me [fol. 86] in this instance to be a fairly irrelevant matter with nothing significant connected with it.

I understand that Mr. Sweezy somehow or other has an understanding that this particular Spaniard arrived here after the Spanish Civil War; but based on that understanding, I don't want the record to indicate he is subjecting himself to penalties of perjury for something very casually learned.

Mr. Nelson: I inquired into how he acquired that knowledge for that purpose.

Do you know whether or not Duran is a citizen of the United States?

The Witness: I think he is.

Mr. Nelson: Do you know what his occupation is?

The Witness: I think he works for the United Nations.

Mr. Nelson: For a particular delegation?

The Witness: For the Secretariat, I think, as a permanent member of the staff of the United Nations.

Mr. Nelson: As a representative of what country?

The Witness: Of no country.

Mr. Nelson: Have you discussed Communism with him?

The Witness: No.

Mr. Nelson: You have never discussed political philosophy with him?

The Witness: I have chatted with him occasionally. I don't remember discussing political thoughts.

Mr. Nelson: Do you understand his beliefs to be Communist beliefs?

The Witness: No.

Mr. Nelson: During his participation in the Spanish Civil War?

The Witness: I don't know anything about it.

Mr. Nelson: Did you understand the hostilities to be a battle of ideologies?

The Witness: I understood it to be a rebellion against the duly constituted government, precisely the kind of overthrow by force and violence which you are supposed to be investigating here.

Attorney General Wyman: Mr. Sweezy, just to wind up at least my part of this, you mentioned that you gave a couple of previous lectures at the University of New Hampshire to the one on Monday March 22, 1954.

The Witness: Right.

Attorney General Wyman: Are those the only two other times you have appeared on the campus?

The Witness: You mean in the classroom?

[fol. 87] Attorney General Wyman: In a classroom?

The Witness: No. I also went to some sessions each year of the course, the Humanities Course.

Attorney General Wyman: And taught?

The Witness: Well, mostly submitted myself to questioning.

Attorney General Wyman: Was that in years previous to 1950?

The Witness: 1950?

Attorney General Wyman: Yes, sir?

The Witness: No. I think, to the best of my knowledge, or to the best of my recollection, this is the third year that has happened. I tried to look up and see if I had any documentation on that, but I couldn't find it.

Attorney General Wyman: Now, at all times in your appearances at the University of New Hampshire, whether

by invitation or otherwise, you have been under the aegis of Professor Daggett?

The Witness: I think you asked me the last time whether I had ever talked to the Liberal Club. Did you?

Attorney General Wyman: I believe I did.

The Witness: And I forget what I answered at that time, but I very likely did talk to the Liberal Club.

Attorney General Wyman: That would be in the late '40's?

The Witness: I should think perhaps 1949, somewhere along there.

Attorney General Wyman: How many times do you remember you talked to the Liberal Club?

The Witness: I can only remember once. I think it was probably the Liberal Club.

Attorney General Wyman: Who invited you to appear there?

The Witness: I think it was the president of the Club at the time, whoever he was, I don't remember.

Attorney General Wyman: Did you converse with Charlie Chase at that time?

The Witness: I don't recall. I certainly didn't have any particular conversation with him.

Attorney General Wyman: Now did you answer the question about the aegis or over-all guiding invitation of Professor Daggett? Was that the moving force in having you come to the University? Has it been consistently him?

The Witness: He is the person in the course I know best.

Attorney General Wyman: Did you receive pay?

[fol. 88] The Witness. No.

Attorney General Wyman: Did you ever sign an oath under Chapter 312, Laws of 1949, the so-called teachers oath?

The Witness: No. I might state I signed something probably similar when I had my name put on the petition as an elector for the Progressive Party in 1952.

Attorney General Wyman: It is similar, but not identical.

Would you care to tell me what the content of the lec

The Witness: No, I would not care to.

Attorney General Wyman: Did you advocate Marxism at that time?

The Witness: I decline to discuss the contents of the lectures.

Attorney General Wyman: Did you advocate Communism at that time?

The Witness: I——

Mr. Phinney: I think you should answer that.

The Witness: No. No, I didn't.

Attorney General Wyman: Did you express the opinion, or did you make the statement at that time that Socialism was inevitable in America?

Mr. Phinney: Objection.

The Witness: Aside from saying I did not advocate overthrow of the Government by force and violence or any subversive doctrines as defined in New Hampshire legislation, I decline to discuss the contents.

Attorney General Wyman: Did you in this last lecture on March 22 or in any of the former lectures espouse the theory of dialectical materialism?

The Witness: Decline to answer on the grounds stated.

Attorney General Wyman: Is not dialectical materialism atheistic?

The Witness: No, it isn't.

Attorney General Wyman: In what respects is the dialectically materialistic aspect of the evolution of society consistent with belief in God?

The Witness: I am perfectly willing to discuss these philosophies, these philosophical questions——

Attorney General Wyman: (Interposing) It is not philosophical. It is directly related to what has been taught to students at a State supported university. It is only for that——

The Witness: (Interposing) Do you assert that I did [fol. 89] teach dialectical materialism?

Attorney General Wyman: I have asked you, and you have declined to answer.

The Witness: Now, you are saying that you are discussing this in reference to what has been taught.

Attorney General Wyman: I am asking you simply the

Mr. Phinney: Excuse me. May I attempt to clarify this a little bit?

Attorney General Wyman: I'd rather get the answer from him, and then you can clarify it.

Mr. Phinney: The clarification is for the purpose of getting an answer.

Attorney General Wyman: I know, but—Well, I wish to be fair. Go ahead.

Mr. Phinney: Thank you. If the question with regard to dialectical materialism—and I just don't know—but if it is intended to ask of Mr. Sweezy whether he discussed that, meaning by dialectical materialism anything subversive, I want him to answer it. I don't know what dialectical materialism means, you see, but I do instruct Mr. Sweezy that if the interpretation placed on it is anything which can be considered subversive within the meaning of the '53 Act, I want him to answer it. If it doesn't I want to instruct him to decline to answer it on the basis it is irrelevant to the scope of this inquiry and for several other Constitutional reasons which I don't think have to be specified now.

This is an effort to clarify, and not to cloud the record.

Attorney General Wyman: Will you read the question to Mr. Sweezy concerning dialectical materialism?

(Question read as follows: "In what respects is the dialectically materialistic aspect of the evolution of society consistent with belief in God?")

Mr. Phinney: I think he said he is personally willing to discuss the philosophies involved, and you don't want that.

Attorney General Wyman: I think the record is clear on that. What I mean is simply to inquire of this witness, first, the answer to that question in view of his declination to answer whether or not he espoused the theory of dialectical materialism to a class at the University of New Hampshire. He declined to answer that question.

I submit—although I am by no means an authority on the subject nor as well informed as this witness—that dialectical materialism is the materialist concept of the universe. It is entirely consistent with the Communist theory

and inconsistent with a belief and design in an omnipotent [fol. 90] God.

The Witness: As I said earlier, I am perfectly willing to discuss this as a matter of philosophy and theology, in which I don't proclaim myself as an expert; but I am not going to discuss it if the implication is that this is what I taught at the University.

Attorney General Wyman: I have in the file here a statement from a person who attended your class, and I will read it in part because I don't want you to think I am just fishing.

"His talk this time was on the inevitability of the Socialist program. It was a glossed-over interpretation of the materialist dialectic."

Now, again I ask you the original question.

Mr. Phinney: In view of the statement read in the record, I would object and instruct the witness not to answer on the basis of the fact that the lecture is not within the scope of this inquiry for reasons of pertinency as well as for Constitutional reasons.

The Witness: I decline to answer for the reasons stated by counsel.

Attorney General Wyman: No further questions at this time.

Does anyone else have any questions?

Mr. Conner: Mr. Sweezy, I believe you said earlier today that you thought it was possible for a Communist not to intend to overthrow existing government. Is it not an aim of the Communist Party to overthrow all existing non-Communist governments?

The Witness: I am not an expert on the aims of the Communist Party, Mr. Conner. I don't consider myself to testify on that point.

Mr. Conner: Why is it then you think it is possible for individual Communists not to advocate the violent overthrow of government?

The Witness: Because I have read a great deal of Communism and by Communists, and this is the conclusion I have reached.

Attorney General Wyman: On the, or in the excerpt

from "On Trials and Purges," which was written, as you said, by yourself and Mr. Huberman, do you still maintain the writing as therein stated? Do you still affirm that writing?

The Witness: Well, it expresses my opinions, yes.

Attorney General Wyman: Any further questions?

Mr. Nelson: In your readings, Mr. Sweezy, do you understand it to be the aim of the rulers of the Union of Soviet Socialist Republics that all countries should become Socialist countries in that Union?

The Witness: No.

[fol. 91] Mr. Nelson: Do you advocate that this State be a Socialist State?

The Witness: New Hampshire, you mean?

Mr. Nelson: Yes.

The Witness: Well, I don't think New Hampshire can be different from the United States. It is obvious in my writings I am in favor of the Socialist economic system in the United States. That would include New Hampshire, but not especially New Hampshire.

Mr. Nelson: Do you advocate the United States, including New Hampshire, be a Socialist state?

The Witness: Yes. I have said that many times. It is on the record. It is in all my writings over the years. It is no great discovery I am a Socialist. This is true.

Mr. Nelson: Do you advocate, that the United States, including this State, as a Socialist state, be integrated with the Union of Soviet Socialist Republics?

The Witness: No, and never have so advocated.

Attorney General Wyman: Do you consider, and do you take the position in your writings, which are available and are read in this State, that the transition from a Capitalistic economy to a Socialist economy is possible without force and violence?

The Witness: Yes.

Attorney General Wyman: And in this Socialist economy that you advocate, that you support, who would own the means of production.

The Witness: The state just as the State owns considerable segments of public property today.

Attorney General Wyman: And would there be any private property?

The Witness: Yes.

Attorney General Wyman: What would be capable of being owned privately?

The Witness: In general the rule, I think, that Socialists have had in mind over the years is that anything that can be used by a person himself can be privately owned without in any way interfering or injuring the character of a Socialist system.

Attorney General Wyman: Would there be transmission by inheritance?

The Witness: Certainly.

Attorney General Wyman: Would land be owned by private individuals?

The Witness: No.

Attorney General Wyman: Do you take the position and do you advocate that those who now own land can be dispossessed of it under the Constitutional form of Govern-
[fol. 92] ment?

The Witness: With compensation. I am in favor of compensation for all privately owned means of production. I think this is undoubtedly a necessary aspect of a peaceful transition, and I am in favor of that.

Attorney General Wyman: But your writings show, do they not, that the process of transition is inevitably difficult, painful, and violent?

The Witness: That referred to the whole world, Mr. Wyman, not specifically to the United States. I think we are luckier than most of the rest of the world, and I think things can be possible here and in a few other countries, like Britain, Scandinavia, New Zealand, some of the countries with higher standards of living, with Democratic traditions, with historic respect for civil liberties, which I hope we still have, I think in such countries things are possible which are not possible in countries which have never known other than tyrannical, despotic rule. That is precisely what we intended to convey by saying it would have been so much better had the transition first come in the advanced countries.

Attorney General Wyman: And the "majestic successes of the Soviet economy" of which you write are what?

The Witness: Do you want me to recite statistics? I

can't do too well offhand, but it would seem to me quite obvious that the economy of the Soviet Union has vastly increased production in a relatively short time and under extremely difficult conditions. I think any competent economist or statistician or historian would take that as a matter of course, would not think of questioning it.

Attorney General Wyman: And the hopes of mankind for a better future go with the continuation of the inevitable transition from Capitalist economy to Socialist?

The Witness: That is my opinion. I don't try to impose it on anybody else. That is what I concluded from my study of economics, history, and politics.

Attorney General Wyman: And you do not advocate the use of violence or force to accomplish those ends?

The Witness: Not only don't advocate it, I deprecate it.

Attorney General Wyman: And you advocate that Capitalism under assault by this process of Socialist transition should lay down its arms and accept it?

The Witness: This I didn't say. This is an extremely complicated question in the whole present posture of international affairs. Again, as a matter of an academic discussion, I am perfectly prepared—I don't want to hide my opinions. I try to set them for people to see, and I don't mind them being on this record; but I can't see the [fol. 93] relevance to this investigation.

Attorney General Wyman: I will make this last question. In your writings above referred to today, you stated that "Capitalism, the organization of society according to the barbaric principle of private profit, is the scourge of mankind; and violence designed to preserve it is doubly damned, once for itself and once for its purpose." To me, that means that the answer to the last question put to you is, by your own writings, yes.

The Witness: Mr. Wyman, I think support for that can be found in the New Testament much better than it can in Marx.

Attorney General Wyman: No further questions.

Do you want to say something, Mr. Phinney?

Mr. Phinney: Yes. In view of your—To make the record reasonably complete, I'd like to make one or two points which I do think are pertinent. First of all, I take it there

will be no question that today's record and the previous record and any other records would be considered as a whole?

Attorney General Wyman: Yes, I believe so. On the other hand, I will now state on the record that in view of the witness' declination to answer, I shall have to transfer the matter to the Superior Court.

Mr. Phinney: With that thought in mind, that is why I asked the question.

Then I'd like today's record to contain within its four corners the first four paragraphs, at any rate, of "Principles of Communism by Friedrich Engels, A New Translation by Paul M. Sweezy" which the Attorney General made reference to.

Attorney General Wyman: I think it has been previously identified; and if the witness requests it, or if his counsel does, it will be marked as an exhibit for the purpose of inclusion in the transcript in its entirety.

Mr. Phinney: I'd like to have it marked, of course; but in addition to that, I'd like to have this record contain the content of the first four paragraphs.

Attorney General Wyman: It will be done.

Mr. Phinney: The first four paragraphs of this introduction, specifically including reasons for publishing "Principles of Communism."

The second point I'd like to make is, and I think the record probably should show, that contrary to the opinion of the Supreme Court of New Hampshire in Nelson vs. Wyman there appeared in yesterday's press what can only be construed as a release by the Attorney General a portion of the transcript; that particular portion, incidentally, which has been under some discussion here today wherein Mr. Sweezy stated, and I quote, "I think there is a great [fol. 94] deal of misunderstanding about Communism. It is an historical force that is here to stay," and so forth. I refer, of course, to the printing of the speech by the Governor of the State primarily concerned with an individual named Daggett, but in the course of which the Governor is quoted indirectly as saying with reference to Mr. Sweezy that, "He is a man who believes there is a great deal of misunderstanding about Communism and that there are

many wholly sincere and admirable people who are Communists."

I'd like the record to indicate that contrary to the Court's opinion in the Nelson case this must be shown to be a release by the Attorney General's office since it could come from no other source. I just want that for the record at this time.

Attorney General Wyman: That, however, is a statement purporting to have come from the Governor of the State.

Mr. Phinney: Yes. I don't want the slightest question in the record as to that. That is a direct quote from the Governor of the State. My point is that it could have emanated only from the office of the Attorney General. That is all.

Mr. Nelson: Earlier in your testimony, Mr. Sweezy, you stated twice "I know very few Communists." Who are those very few?

The Witness: Excuse me. Could I have on the record who is now questioning me?

Attorney General Wyman: The record will show that.

The Witness: I admit I named the ones I could think of offhand earlier.

Mr. Nelson: Browder, Foster, Hicks——

The Witness: (Interposing) Frankfeld, Dobb in England. I also know an English Communist by the name of Emile Burns. I am trying to think of people whom I can definitely identify as Communists. You understand, I am not saying I don't know any other Communists. They might be. I am not going to testify about anybody unless I am sure. I can't think of anybody.

Mr. Nelson: Where did you meet these individuals?

The Witness: Browder and Foster at Harvard, they both came to give talks, I forget the exact circumstances—probably had a meal with them, perhaps was on a committee, to meet them and help them around. I can't tell you exactly. I know those were the general circumstances under which I met them. I already explained relative to Hicks and Frankfeld.

Mr. Nelson: The rest?

The Witness: Dobb is a professor in the field of economics, a professional colleague in the field of economics whom I met as I have hundreds of other economists.

[fol. 95] Burns I chanced to meet at some kind of a social gathering in London during the war. I recall it because I knew his name. He is an editor of a book called "Handbook of Marxism," and since I knew his work, I made a point of getting him aside and talking to him for a little while.

I met quite a few Communists in Germany at the closing stages of the war when I was in the OSS, and my job was to go around and talk to all sorts of political figures. The names have slipped me at the moment, but I certainly knew them as Communists at the time.

Mr. Nelson: What Communists have you met in New Hampshire?

The Witness: I already testified that I don't know of my own knowledge any Communists in New Hampshire. I have subsequently seen in the paper that Charles Chase said he was a Communist prior to 1950, was it; and I have no doubt that Mrs. Nelson was a Communist prior to 1951.

Attorney General Wyman: Do you have any doubt Mrs. Nelson is a Communist today?

The Witness: I don't think I have an opinion on that.

Mr. Nelson: In earlier inquiry relative to this subject you requested the clarification of the question, making reference to whether or not they were personally known to you as a Communist.

The Witness: Yes.

Mr. Nelson: What do you require for a person to be personally known to you as a Communist?

The Witness: A person who has been publicly identified and has been a spokesman for the Communist Party in one country or another and whom I personally have known. I said in an earlier question I don't make a point of going around asking people whether they were Communists or Republicans or Democrats; and if they want to tell me, that is all right. But people, for reasons which are obvious, don't ordinarily tell you whether they are Communists or not.

Mr. Nelson: In other words, it would have to be a public identity?

The Witness: Somebody who has been a Communist

before the public whom I have known. That is what I am talking about.

Mr. Nelson: You stated partly that your associate, Mr. Huberman was not a Communist.

The Witness: Yes, and he has so stated under oath before the McCarthy Committee.

Mr. Nelson: Do you know one way or the other?

Mr. Phinney: He had already answered that question. He so stated under oath before the McCarthy Committee.

Attorney General Wyman: You mean the Permanent [fol. 96] Committee——

The Witness: (Interposing) Sub-Committee.

Attorney General Wyman: A sub-committee of the Senate Permanent Investigating Committee?

Mr. Phinney: I don't know.

Mr. Nelson: In view of Mr. Phinney's comment, your answer is based on a reading of that testimony?

The Witness: Well, long and intimate personal acquaintance and many discussions of all these problems. I don't know if I could know anything much better, except about myself.

Attorney General Nelson: That is all. Thank you very much.

(The first four paragraphs of the "Principles of Communism by Friedrich Engels, A New Translation by Paul M. Sweezy" follows)

"This is Friedrich Engels' draft, in question-and-answer form, of what later became the 'Communist Manifesto,' of which Engels was co-author with Marx. Briefer and more elementary than the 'Manifesto,' it is perhaps the simplest authoritative statement of the fundamentals of Marxism that has ever been written.

"We are publishing 'Principles of Communism' at this time for two main reasons.

"First, it is in its own right an important work which ought to be available to the English-reading public. We know of three earlier English translations,* the last in 1933, but all are long since out of print and practically unobtainable.

"Second, Marxism in its predominant present-day form

of Marxism-Leninism is under violent attack in the United States today. People are on trial for teaching or 'conspiring to teach' its doctrines, which are alleged to include advocacy of violent overthrow of the government of the United States. Under these circumstances, it seems worth while to put before the American public this concise and easily understandable statement of just what the founding fathers of Marxism stood for. In doing so, we call special attention to Engels' answer to Question 16— 'Will the peaceful abolition of private property be possible?'—on pages 13-14 below."

(Thereupon, at 12:30 o'clock, p. m., Thursday, June 3, 1954, the above hearing was closed.)

IN SUPERIOR COURT OF MIDDLESEX COUNTY

Hearings of June 28-30, 1954

Concord, New Hampshire

Hearing Before Honorable Robert F. Griffith:

The Court: My understanding is that counsel have agreed that counsel for Mr. Sweezy may also be heard this [fol. 97] morning on the issues involved in the present case. Is that correct?

Mr. Wyman: Yes, your Honor.

Mr. Millimet: Yes, your Honor.

The Court: All right. Whenever you are ready.

Mr. Wyman: May it please the Court: As indicated to your Honor in chambers last week, I requested, and I think Brother Millimet did also in Mr. Phinney's absence, the opportunity to make an opening statement here in the nature of a combined opening statement and comment upon the answer which has been filed. The reason, and I think that was agreed between counsel and his Honor in view of the nature of the case, the reason for that in part is because the answer which has been filed by Mr. Millimet in this case raises some very serious questions concerning the good faith of the Attorney General, the good faith of

the Governor, and asks for an injunction against the Governor with the imputation that in some manner not entirely disclosed on the face of the complaint the Governor and the Attorney General are in cahoots for the purpose of picking on the respondent in this case.

I will refer to the answer in this respect first simply by saying that of course what the Governor of the state says is up to the Governor; it's not for me. Nothing to my knowledge referred to in this answer was said by the Governor in reference to any matter which was not contained in the petition on file in this court as a public document at the time it was said. Whether or not it was on file, it is certain that the decision in the Supreme Court had not then, I believe, been handed down, although whether or not it had I would be perfectly willing to make the finding in connection with the release of any of the transcripts in either of these matters that it was in the public interest and it would serve the purposes of the investigation to have the transcripts made public in their entirety, except that of course there is a great deal of material in these transcripts which has to do with other individuals and refers to other names, and I have tried consistently to keep peoples' names out of the press unless the manner or method in which they appeared in print arose in accordance with the formula under which we have been acting in New Hampshire and which has been approved expressly by our highest court.

Your Honor, this case is very simple. This case concerns merely whether or not the respondent knows of subversive activities or subversive persons within the State of New Hampshire. He says he does not.

Mr. Millimet, in his answer for this respondent, says that I should have to offer proof to indicate that there is some reason to ask this petitioner this type of questions. He says that the burden of proof which the Attorney Gen- [fol. 98] eral must sustain in this case requires that he show a factual relationship between the questions claimed to be relevant and the subversive activities he is authorized to investigate; in order to clarify this burden, the Attorney General must offer evidence relating to the lecture, to the Progressive Party, to a purpose to overthrow or destroy or

alter our constitutional form of government by force or violence. I am perfectly willing to offer evidence, your Honor; I have references here to transcripts if your Honor feels that an offer of evidence is required when I am through with these remarks. But I don't conceive that there can be the slightest question but what these questions are entirely relevant on this phase. *U. S.* v. *Orman*, a decision handed down in September of 1953 after the Lawson case, holds that, and I quote from page 153 of 207 Federal 2d, "Because of the scope and purpose of congressional investigations, pertinency in this context is necessarily broader than relevancy in the law of evidence."

Of course, your Honor, as I understand it, we are not even bound by the rules of evidence in any fact-finding investigation. This being a contempt proceeding may involve consideration of the rules of evidence in so far as this respondent is involved on the witness stand in this court. But before we got here in questioning this respondent the rules of evidence for centuries of historical learning have been held to be inapplicable to legislative investigations.

The Court further says, " 'A legislative inquiry may be as broad, as searching, and as exhaustive as is necessary to make effective the constitutional powers of Congress.' * * * A judicial inquiry relates to a case, and the evidence to be admissible must be measured by the narrow limits of the pleadings. A legislative inquiry anticipates all possible cases which may arise thereunder and the evidence admissible must be responsive to the scope of the inquiry, which generally is very broad." It has been said by the Supreme Court of the United States "that a witness before a congressional committee is bound to judge rightly as to pertinency. His honest mistake of law is no defense." The question is: was the question and the possible answer pertinent at the time it was put to the inquiry. It is the question which determines the pertinency, not the possible answer. The requirement of relevancy in the law of evidence is thus narrower, much narrower, than the requirement of pertinency in a legislative investigation.

Mr. Daggett was asked questions which appear in the petition of three major types, and on advice of his counsel

he chose to confine his refusal to answer to the claim that the question—the question—not the possible answer, but the question, was not relevant. Even admitting the narrowness of the concept of relevancy and assuming for pur- [fol. 99] poses of discussion here that relevancy is the test before you here today, what does the International dictionary definition of relevancy say? Webster says, "Bearing upon or properly applying to the case in hand of a nature to afford evidence tending to prove or disprove the matters in issue."

Doesn't the question of whether or not a professor at a state institution who knew that a student chose Communism would not attempt to dissuade him in that choice any more than if he chose Capitalism, doesn't that question strike a relevant cord in an investigation into subversion? I don't say this witness is subversive, and I have never said it directly or indirectly. I don't say that the answer to that question, if it were to be given, would not be completely in the negative, except that in the first transcript of a private hearing in this professor's office this professor told me that he would not attempt to dissuade such a student any more than if he chose Capitalism.

My brother says that the subversive activities act, when read with the resolution directing this state's investigation, sets up the narrow formula of looking into violations and subversive persons, and that because that formula is narrow the questioning of this witness has gone beyond the pale of reasoning and offends the first amendment. The Act of 1951 talks about a subversive person as meaning any person who commits, attempts to commit or aids in the commission of, or advocates, abets, advises or teaches by any means any person to commit, attempt or aid in the commission of any act intended not only to overthrow, destroy or alter, or assist in the overthrow or destruction or alteration of the constitutional form of government, of the federal government or of the state government, or who is a member of a subversive organization or a foreign subversive organization.

Now, that means immediately that the question of subversive organizations comes into the picture in defining the proper and legitimate scope of the investigation, because

a subversive organization is defined by legislative fiat as an organization which has for a purpose, not its principal purpose, just a purpose, one of its purposes, the overthrow of the government by force and violence.

Now, the Attorney General of the United States, rightly or wrongly, with or without hearing over the past many years, has designated organizations which are subversive or Communist or Fascist, or Totalitarian. In Joint Anti-Fascist Committee v. McGrath the Supreme Court held that that process, which is now conducted under the aegis of the Subversive Activities Control Board, should require notice and hearing to an organization before the stigma of Communist controlled should be placed upon it, and that is what is being done, as I understand it, at the present time.

But the Subversive Activities Control Board has found that the Communist Party U. S. A. is subversive after a [fol. 100] protracted notice and hearing; and over the period of years from 1944 to 1953 various attorneys general of the Democrat Party as well as the Republican Party have listed organizations as subversive or Communist in lists which have been put out to the public, to the press and to the people of the country as at least some indication; and I take this much in good faith, referring to the judicial system in this country, some indication that there is some reason for that. And certainly in investigating in New Hampshire, when you have a list of organizations and evidence tending to indicate that individuals have been active for one or more organizations on that list, you then have at least signposts for the purpose of inquiry. And it's hard to see how, in the formal definition as it exists in the Act, there can be any question but what activities for any of those organizations, or on behalf of any of those organizations, can help but be relevant to an investigation of subversion.

If an organization is Communist controlled, its purpose is the destruction of our way of life and our government by definition. If we had the proposition to consider ourselves de novo, it may be that the preamble to the Act of 1951 would not be legislated by us. But it is too late for that in New Hampshire. The legislature has spoken, and

for the purpose of this investigation it no longer can be argued that the Communist Party is not subversive by definition in this state. Therefore, it's necessary to look at the answers of this professor.

Question, page 32 of the transcript: "Is it your position that the Communist Party U. S. A. does not have as a purpose the forceful overthrow of this state and nation?" Answer. "I have never seen any evidence convincing to me that the Communist Party U. S. A.——

Mr. Millimet: What page?

Mr. Wyman: Page 32 at the bottom.

The Court: Pardon me, General, for interrupting, but I seem to have mislaid the transcript which was filed. Do you have another copy of that?

Mr. Wyman: I do not, your Honor. This is the original. There were only two, the original and one copy.

The Court: All right.

Mr. Wyman: I will file this original with the Court.

The Court: Do you have a copy of the transcript?

Mr. Millimet: Yes, I do. Would your Honor like to see it?

The Court: No, you'd better keep it. You probably would like to follow along, too, and I can listen. I have read the transcript.

Mr. Wyman: I will file it with your Honor as soon as I finish.

[fol. 101] The Court: Well, no, I don't want to deprive you of that. You continue.

Mr. Wyman: I will simply read a few of the questions and answers.

The Court: You may read as many as you want.

Mr. Wyman: Professor Daggett—"I have never seen any evidence convincing to me that the Communist Party U. S. A. was interested in overthrowing by force this government." Is that what he has been teaching students at the University of New Hampshire? I don't know; I don't say that it is, your Honor. But I say that in these times a question concerning what has been the teachings is entirely relevant in determining the line between teaching and advocacy. No one, much less the State or myself, has urged anywhere that Communism, Marxism, any "ism"

shouldn't be fully explained, shouldn't be objectively presented, taught to adolescents who seek to determine what the facts of political and sociological life are in understanding the dangers and the pitfalls to this country today. This should be taught, but it should not be slanted. It should not be advocated. It is an entirely proper question to ask whether that has been done. And if the answer to that is in the negative, then it is entirely proper to examine into collateral related inconsistent facts.

Now further on in this first private transcript of this professor's testimony the question was asked this professor, "Do you consider Communist activities merely a political affiliation? I am not now speaking of your own, if any; I am not talking about that. I am talking about the membership", [page 40] "the membership and participation of X, an individual, in Communist work and objectives in this state; do you consider that a question of political activity?" Answer. "Well, I think it is, yes."

Your Honor, if an adolescent in this state or anywhere else in this country chooses Communism today, he makes a choice which will take him into, in all probability, an eventual mortal struggle with his own country. To say that this nation and the free western world is not today at war with Communism is to make a conclusion which lies in the face of fact which is notoriously naive today. Any thinking, loyal professor anywhere in America today who would permit a student to follow along a path which takes him into membership in the Communist Party or activity for Communism without attempting to dissuade him from that choice at least, if nothing more, raises a certain number of questions concerning thought processes.

I don't believe, with all due respect to this respondent's learning, that there can be any room today for any substantial showing that the Communist Party is a political organization entitled to a place on the ballot or that it does not purpose and seek and conspire to destroy us, in- [fol. 102] cluding the system which permits your Honor to sit on this bench.

Now, do these questions relate? Let's examine for just a moment the three general groups of questions. The first one involves questions concerning this professor's concept

of Communism, his application of that concept to his relationship with the students, his interpretation of certain unavoidably associated Marxist-Communist doctrine, Dialectical Materialism and other concepts of a classless, stateless and godless social structure.

If there is any question about Marxism, and your Honor will recognize that there is on file in the petition involving Mr. Sweezy, and I raise this at this point only because a part of the groups of questions here involve lectures at the University of New Hampshire by Mr. Sweezy on Mr. Daggett's invitation, or on the invitation of a group of professors on the Humanities Board at the University of New Hampshire. Mr. Sweezy says, "I am a Marxist. I consider myself a Marxist, yes."

The American Bar Association three years ago has written a brief on Communist Tactics, Strategy and Objectives. If you don't want to take it out of a book such as The Communist Manifesto, written by Karl Marx and Friedrich Engels, which says in part with reference to Communism that "The Communists disdain to conceal their views and aims. They openly declare that their ends can be attained only by the forcible overthrow of all existing social conditions. Let the ruling classes tremble at a Communist revolution," take the brief filed by our own association defining a Marxist in Lenin's terms as "one who extends the acceptance of class struggle to the acceptance of the dictatorship of the proletariat." There is considerable more.

If a Marxist has taught at the University of New Hampshire, what did he teach? Did he implant into the minds of the students objective presentation of Marxism? Or did he not? If he did, has he thereby planted the seed? Has he thereby planted a seed which is not in perspective? Is it possible for any Marxist anywhere to ever teach? Is he not as affixed to his ends and his purposes as is a Communist? If there is a difference between Marxism and Communism, then would it not be proper and relevant to discuss it, particularly with relation to what was said at the University of New Hampshire? I don't understand when Mr. Daggett takes the position that he declines to answer on grounds of relevancy that he takes the position

also that the questioning interferes with his academic freedom. The content, of course, is that the state university is a perfectly proper subject for investigation. If there isn't anything but teaching, objective teaching, all a witness has to do is say so. There is no hysterical atmosphere nor any attempt to enjoin conformity in any way, shape or manner by the asking of questions which occupy a position [fol. 103] with respect to this respondent the same as if there were six senators in the senate of this state and nine representatives calling this respondent before a committee room at a committee table. There is no basis for the scurrilous remarks which have been made in the answer which say——

Mr. Millimet: Excuse me. Would you read that to me? (Statement read back.) Thank you.

Mr. Wyman: Which say that the "position of the petitionee has been so hopelessly prejudiced in the eyes of the public that this Court should refuse to grant to the administration the power to sue for contempt because of the contempt expressed by the Administration for the Constitutional rights of the petitionee."

Your Honor, in light of the congressional hearings, and of all of the types of investigations that have gone on recently, I ask your Honor sincerely to read the transcript of the first Daggett hearing in the privacy of his office at the university in December and determine whether or not I did not lean over backwards to be patient to explain and to take this professor by my own recommendation to an attorney of his own choosing, so that we could go on again without filing a petition where he had not had benefit of counsel. To say that the administration is here before you, your Honor, is of course just one more political aspect of an answer that is already in many respects quite political.

I am going now, because I don't wish to stray much further from the time which is involved, to read a portion of a concluding statement because of the importance of the words. Mr. Sweezy, the visiting lecturer—The questions, incidentally, the second group of questions, have to do with what did Mr. Sweezy say. Did he advocate? Did he teach? What was the content of his lecture? I have reason to believe Professor Daggett was there present at the time of

the lecture. What papers were used? What documents were used? Not in any spirit of excluding them, but for the purpose of examining them. If Mr. Daggett knew Mr. Sweezy was a Marxist, did he tell the class that? Was this the case of having Gerald K. Smith, for example, come down and give a lecture and introducing him as such to the students? Was this a situation like that? Was there actually a cover-up and a guise under the name of Socialism, when as a matter of fact the Socialism of Mr. Sweezy is a far cry from Norman Thomas Socialism, as is well known and appears from his various writings?

Now Mr. Sweezy—You have the transcript. My brother and I agreed, and your Honor agreed, that it was permissible to refer to the transcripts in the argument of this matter preliminary to your Honor's ruling—Mr. Sweezy has been related with, or active with, or chairman, of a number of organizations which have been cited by the national attorney general or the House committee on Un-American Activities as subversive or Communist con-
[fol. 104] trolled. His activities for these orgaizations occurred over such a protracted period of time that there can be little doubt but that he knew, at least, that the organizations had been so designated.

Mr. Phinney: I take it this is argument, your Honor, not an opening statement.

The Court: I am sorry. I can't hear you.

Mr. Phinney: I take it this is argument, your Honor, and not an opening statement.

The Court: I assume that this portion is argument.

Mr. Wyman: Well——

Mr. Phinney: Argument, I might say un-supportable by any evidentiary means.

Mr. Millimet: I'd like to get that point clarified, if I could, your Honor. Mr. Wyman has already made several statements to which I would object as a matter of law in ordinary court proceedings, including his citation of the attorney general's list, but I haven't undertaken to do so since I thought I would have a chance to preserve my own rights in my argument by making those points. I assume that is all right?

The Court: Yes. I don't know whether it was you or

the attorney general that put out the lights, but can you all see all right? (The lights in the courtroom went off.)

Mr. Phinney: I would say this, your Honor, the attorney general apparently is trying to put them out. It remains for your Honor to decide whether he succeeds.

Mr. Wyman: I will let my words speak for themselves. I think it is relatively clear from an examination of the transcripts that the connections appear in citations which have been read into the transcripts. The transcripts speak for themselves, whether or not this is argument.

Mr. Millimet has claimed that to question Professor Daggett is irrelevant. He has said to question him in connection with Mr. Sweezy's lecture is irrelevant. I have got a son, and I have got a daughter, your Honor, and I don't want them going down and coming out of my own Alma Mater with any ideas such as Mr. Remington or Mr. Hiss has had. I don't want them going home to their parents and saying such things as, well, I am too smart, don't teli me any more, don't tell me you ought to own this land; the land ought to be owned by the state. I don't want them coming home and saying I am too smart, don't tell me any more there is an Almighty God, I know better than that. If my brother wishes to argue that there are not contained in the elements of Marxism those precepts and those fundamentals, he is at liberty to do so.

[fol. 105] The Court: General, I do not seem to have the Sweezy transcript. The Sweezy transcript has not been filed, has it?

Mr. Wyman: I thought it had, your Honor. I will file it right now.

Mr. Millimet: I have never seen a copy of the first Sweezy transcript. And as I said at our pretrial conference last Thursday, I didn't have any objection to my brother referring to it, but I would like to see it some time.

The Court: I remember. Well; I haven't seen it either.

Mr. Millimet: All right.

Mr. Phinney: Has neither transcript been filed with your Honor?

The Court: I have not seen them if they have. Perhaps the clerk can tell me whether they have been filed or not.

The Clerk: I haven't seen them.

The Court: I know in your answer you questioned whether they had been filed.

Mr. Phinney: Together with corrections, yes.

Mr. Millimet: I must admit it takes me by surprise, your Honor, because as I understand the state of the record that means that all the Court has seen is what my brother has alluded to in the Sweezy petition.

The Court: That is correct. I have seen, however, the transcript in the Daggett hearings.

Mr. Millimet: Yes.

The Court: I do not have them here, but I have seen them and read them.

Mr. Millimet: I would like to state for the record I would not have been quite so ready to agree that allusion could be had to these transcripts if I had known that the Court had not had an opportunity to see them, because it seems to me that for the protection of my client that the whole transcript should have been available to the Court, since it's always easy to take part of a transcript out of context and perhaps give a different meaning than the whole transcript gives. I don't know what to say about it, but I am a little upset about it.

The Court: If you so desire I will read them now. I will take the time to read them entirely before I make any ruling in any event.

Mr. Millimet: I will reserve my rights, if I may, after I hear what references my brother makes.

The Court: All right.

Mr. Wyman: I suppose, your Honor, that I am entitled here to at least make a showing in respect to relevancy, as to the reasons why I believe there are reasonable grounds to have doubt as to whether or not there was teaching in [fol. 106] this lecture or these lectures by Mr. Sweezy as opposed to advocacy. If you will turn, in view of the fact that this is a case involving Mr. Daggett—we are not as yet in the case involving Mr. Sweezy—and inasmuch as there has been reference again to the national attorney general's list of subversive organizations, to page 32 of the transcript of Mr. Sweezy's testimony on June 3. Question. I won't read all of this because it appears in the transcript. Did you, together with Mr. Leo Huberman,

the co-editor of the Monthly Review of which you are co-editor in New York City, write the following article in part which appears as follows?

Mr. Millimet: Excuse me just a minute. I can't find it in the case.

The Court: Did you say page 32?

Mr. Wyman: And I quote——

Mr. Millimet: Wait a minute now. I guess you started on page 31.

Mr. Wyman: No, I am sorry. It starts right here what I am going to quote. If you will look at page 33.

Mr. Millimet: Excuse me. I can't find what you just read from the transcript.

Mr. Wyman: I didn't read anything from the transcript yet. I am about to.

The Court: Oh, I am sorry. I understood you to say you were reading from the transcript and I couldn't find it either.

Mr. Wyman: No, your Honor. I was trying to summarize the references to Mr. Leo Huberman at the bottom of page 31, who is co-editor with Mr. Sweezy of Monthly Review in New York City, and this is part of what he wrote. "In which country, within the last few months"——

Mr. Millimet: Excuse me, your Honor. I stated in the pretrial conference that I do not object to my brother's use of the transcripts and I do not rise for that purpose. But I do object to statements taken out of context, and I ask that if my brother wishes to use this in this proceeding, and incidentally I will make my point in my argument that it's entirely irrelevant, I request that he be required to file with the Court the entire article from which the quotation is taken.

Mr. Wyman: I would be glad to file it with the Court and a myriad of others if my brother wishes.

Mr. Millimet: My brother may file what is relevant.

Mr. Wyman: I believe this to be relevant, your Honor, because I submit that this writing comes as close to indirect advocacy of force and violence as it's possible to come, and I will read it and let it speak for itself. "In which country, within the last few months, did a presi- [fol. 107] dential candidate promise peace and immediately

upon taking office set about spreading war?" "And as regards"——

Mr. Phinney: Will you state to the Court you are omitting?

Mr. Wyman: It shows omissions.

Mr. Phinney: You don't indicate it.

Mr. Wyman: It shows in the transcript omissions.

Mr. Phinney: The stenographer does not have the transcript, Mr. Wyman.

Mr. Millinet: And the Court did not have until just this moment.

Mr. Wyman: The Court is following. "And as regards the leaders of the two camps, it is certain that in the last eight years the United States has been responsible for killing a vastly greater number of human beings than has the Soviet Union.

"We would not argue, however, that the quantitative question, even if it were possible to answer it with precision, is the crucial one. In the last analysis, those who hate violence must judge it by an entirely different standard—they must ask whether violence is used to perpetuate a state of affairs in which violence is inevitable, or whether it is used in the interests of creating a truly human society from which it will be possible at long last to banish violence altogether.

"So far as the United States and its allies are concerned, there is unfortunately no doubt about the answer. Our Country is preparing to practice violence on a hitherto undreamed-of scale to preserve a social order which in the space of four decades has already produced the greatest orgy of violence in the whole long and violent history of the human race. Captialism, the organization of society according to the barbaric principle of private profit, is the scourge of mankind; and violence designed to preserve it is doubly damned, once for itself and once for its purpose.

"Those of us who have socialism in our bones, who believe that a truly human society can be erected only on the basis of common ownership and economic planning, must necessarily judge the violence of the socialist countries differently. We hate it, as we hate all violence; we would have vastly preferred to have the building of the new

economy take place peacefully and painlessly, as it could have if the advanced countries had led the way. But history—which, as Friedrich Engels once said, is a most cruel goddess—decreed that the economic foundations of the society of the future must be laid in backward countries, not only without the assistance of the advanced countries but against their ruthless and implacable resistance. It was thereby rendered inevitable that the process should be difficult, painful, and violent. But the process does go forward—of that the majestic successes of the Soviet economy, despite all the strains and trials to which it has been [fol. 108] subjected in these years of Hot and Cold Wars, is irrefutable proof—and the hopes of mankind for a better future go with it. For the first time in history we can say that violence is being used to protect regimes which are doing their utmost to create a society which will be able to dispense with violence. That makes all the difference." End quote.

I asked Mr. Sweezy, as appears in the transcript thereafter, whether he had this with him at the University of New Hampshire, and he answered that he didn't think so.

Now Mr. Sweezy's activities in connection with these organizations and in connection with these writings leave one in my position in this investigation with the question of what has been his purpose in doing this, in writing these things. Is it a blind resentment against an attempt by the executive branch of the government to proscribe individual conduct? Can it be blind, from a college graduate and a former Harvard professor, over 16 years of conduct? Is it not relevant to know what a man with a background like this said to adolescents at the University of New Hampshire in a lecture when he received his invitation from the respondent, who says he has never seen any evidence convincing to him that the Communist Party, U. S. A. was interested in overthrowing by force this government?

Now, in the answer counsel for Professor Daggett contends on page 6 of his answer that his client testified that he does not advocate Marx's teaching and has never advocated Marxism in New Hampshire. He refers in that statement to the first transcript page 35 and the second transcript page 82.

When we look at the first transcript at page 35 we find that his answer to the question of whether he advocated Marxism is, "No; I would not say that I advocate Marx' teachings. There is truth in Marx, which I think should be a reason why everybody should read Marx—should understand his doctrine." Question. "Have you ever advocated Marx' teachings in this state?" Answer. "Well, not as such; an answer would—in order to answer it, I would have to explain a good deal—I don't think a question like that can be answered yes or no."

This is a far cry from the statement appearing in respondent's answer that he does not advocate Marx's teachings. And on this record I frankly don't know what the respondent has advocated, what he has taught. And I simply seek to ask for the State in this investigation concerning those matters. And I don't think that it makes any difference if he lends his class to another professor. I don't think he can avoid the responsibility for what that professor has said. And if that professor said nothing subversive, all he has to do is answer and say so. I don't think he can refuse to answer.

[fol. 109] In Lawson v. the United States, which I have filed in this matter with your Honor, and which your Honor in conference expressed a question concerning its applicability to the Daggett questioning, the Supreme Court in denying certiorari, thereby affirmed a matter which I wish to refer to explicitly in this statement because of the fact that a great many people don't understand that this is the law in this country. I have run into that time and time again, and therefore I read from this opinion.

"We hereby reaffirm the holding of the majority opinion of this court in the Barsky case and adopt its reasoning as applicable to appellants in the present cases. So that there may be no mistake or misunderstanding and because the point here involved has proven to be one of constant recurrence, we expressly hold herein that the House Committee on Un-American Activities, or a properly appointed subcommittee thereof, has the power to inquire whether a witness subpoenaed by it is or is not a member of the Communist Party or a believer in Communism and that this power carries with it necessarily the power to effect

criminal punishment for failure or refusal to answer that question."

Farther on this point the court said, and again I quote, "To this we need only add that these particular cases," referring to the Josephson, the Dennis and the Lawson and the Trumbo cases, and the Barsky case, "These particular cases offer the best possible application of the principles of law restated above. No one can doubt in these chaotic times that the destiny of all nations hangs in balance in the current ideological struggle between communistic-thinking and democratic-thinking peoples of the world. Neither Congress nor any court is required to disregard the impact of world events, however impartially or dispassionately they view them."

If a man believes in Communism, your Honor, today, he believes in a system of government which is an anathema to our constitutional form of government, not only an anathema but which by its very doctrine teaches white is yellow and black is white, that Communism must be established everywhere in every nation in the world, that it is inevitable that this should be so that the oppression of the proletariat, the working class, by the capitalist, the owner class, can never be relieved except by a bloody revolution and that all Communists everywhere should get on with this business.

The third group of questions has to do with the Progressive Party. Now, this group of questions is concerned with the question of whether or not the Progressive Party, which is a duly organized party, as I understand it, of general political purport and nature akin to some of our other parties which have not be- proscribed or otherwise limited by the general court in any way; whether or not that party back in the nineteen-forties, 1947, 1948, 1949, [fol. 110] in its formative stages, was at the policy level infiltrated by Communists to the extent of controlling its policies.

Now, that is definitely, I submit, germane to a legislative question of whether or not, to be fantastic for a moment, but of whether or not the General Court might seek to enact legislation affecting the Progressive Party. I am advised that to a large extent at the present time the

Progressive Party is moribund, it isn't active. Some people might take offense at that. I don't know. But it is still so far as we know a party and it filed in the last election. And the general question of whether or not X—I don't want to mention names here, but I will mention one—whether or not for example, Mr. Charles Beebe was a member of the Progressive Party, was active in the Progressive Party in 1947 and 1948.

Mr. Millimet: If the Court please, the question was not asked of Mr. Daggett but only Mr. Sweezy. I don't have any objection, if my brother wants to go into it, but I think the Court should realize it isn't in the Daggett case.

The Court: I understand that. Part of the Sweezy petition.

Mr. Millimet: All right.

The Court: Yes, I understand that. That is all right. You may continue.

Mr. Wyman: I am only going to say questions as to whether X of Y or Z were active, in a legislative investigation, are proper and competent without any requirement that it be necessary to show that those individuals—or to offer that that individual was at that time a member of the Communist Party. But I am perfectly willing to make such offers in respect to names which have been used, some of them, and to others, in the same sense that we refused to characterize Professor Sweezy as a subversive when Mr. Millimet asked Mr. Conner to do that before he would advise his client in respect to answering. It is not for us to say that. The question here is simply an investigation into facts, without any characterization or opprobrium to be visited upon any witness; and that is, I submit, the way that the matter has been conducted and the way it will continue to be conducted. So far as writings of an individual may or may not bring opprobrium, I suppose that it's true and reasonable to conclude that the individual has only himself to blame for that.

Lastly, your Honor, I don't know whether the respondent is incredibly naive or wilfully indifferent to the struggle that is going on in the world between the east and the west, but at page 13 of the answer he states that if the Court should find that the scope of the inquiry does permit

investigation into discussion of ideas in a university class-
[fol. 111] room in a lecture which does not advocate the overthrow of the Government by force or violence, or does not advocate Communism as defined in our basic act, then such an inquiry violates Mr. Daggett's rights of free speech.

I think that statement in the answer does violence to rational thought processes. Ideas, in a university classroom, are tools with which the youthful mind fashions its life-long dies. If Mr. Sweezy considers himself to be a Marxist, a Marxist unavoidably believes that it is inevitable that the capitalist system will fall to an ultimate Socialist system in which the society is classed as stateless and godless. Now, that transition, regardless of translation, is by a bloody and violent revolution. And if Mr. Sweezy says it isn't, if Mr. Sweezy explained to these students that it isn't, very well; but he should answer the question about what he said to these students. And to say that the question, even without the showing, even without the testimony from Mr. Sweezy himself, to say that questioning him about what went on in a lecture, or a series of lectures, at the University of New Hampshire or at Dartmouth, or any other place, is not relevant, I think is unsound because a inquiry as to whether an admitted Marxist advocated the ultimate classless, stateless, godless society at the university is certainly relevant to any investigation into subversion.

Now, apropos of this respondent's teachings at the University of New Hampshire, and I would like to say that I have received correspondence and I have talked with a number of people, I understand Professor Daggett is a good professor, that he is well thought of by his students, and that he in many respects has done an outstanding job as a professor, but apropos of relevancy, has he taught students at the university that Communism is a political theory, that it doesn't involve advocacy of the overthrow of the government by force and violence? Because of course if he has taught them that, regardless of whether it lies in the face of fact, it's obvious that such students have a very grave misunderstanding of the purposes of Communism, and their adjustment in society after they

get out, if that has been their teaching, will be ever so much more difficult.

At page 6 of his answer he says he has never heard Paul Sweezy to his knowledge deliver himself of the Communist Party lines, and yet when you examine the reference to the second transcript which is referred to for that answer as to what he actually said, you will find that he said, "I have never heard Paul Sweezy, to my knowledge, deliver himself to what I understand to be the Communist Party line." Well, if there is one thing that is obvious on the basis of the transcripts in this matter, it is that what Professor Gwynne Daggett understands to be the Communist Party line and what the Communist Party line actually is are not certainly coterminous.

[fol. 112] Now one other thing, because of the fact that we are here now—I would like not to come back here again, no matter what happens today if it can be avoided, at least in respect to Professor Daggett there is no question of academic freedom involved in this petition.

Mr. Millimet: Excuse me. If there is any question about it, of course, I meant only by my statements in the record to say that academic freedom per se is not stated as a right guaranteed by the constitution, but we certainly maintain that the right of free speech safeguards the right of academic freedom and will introduce authority to that effect. I hope my brother understands my position. It's just I don't consider it a separate and distinct right.

Mr. Wyman: Certainly I didn't mean to say that my brother might not contend academic freedom was involved directly or indirectly. I simply say from the State's point of view, from my point of view, who am here before your Honor simply because the legislature, when they created this investigation, left the investigator to the ordinary contempt powers of the general laws, which means any time a witness tells me I am sorry, I refuse to answer, there is nothing I can do about it. The matter must be transferred here, and then it's up to the Court to ask the questions within the limits of relevancy. And if the witness declines to answer the Court, then if the Court sees fit, there is something the Court can do about it. But when I say there is no academic freedom involved, what I mean is this.

I don't directly or indirectly seek to enjoin this professor's activity or teachings: I am simply trying to find out whether or not this professor presented subversive doctrine. And I can't see that there is any reason why the professor should not be compelled to reply, and if the reply is in the negative, then he only has to say no, and I resent the fact that you asked me the question, which is perfectly competent and perfectly proper for him to do. And I can conceive of the natural reluctance and dislike of all Americans everywhere for the compulsive process in questioning. It's perfectly understandable. But the question I raised, your Honor, about repetitive questioning, it is possible that additional testimony may come forward in this investigation requiring further questioning of Professor Daggett. Regardless of whether your Honor wishes me here today only to put the questions which are contained in the petition to Professor Daggett and not the collateral questions which are involved in those groups, regardless of whether we go on again privately, there may be need to question this professor again.

Now, in his answer my brother says that the professor has cooperated quite fully, that his disclosures have been made quite fully, I don't know as I want to add up the numbers of I don't remembers, or I don't know, or I can't think back on that, but I think if you add them up you will [fol. 113] find that there is more than 50% of that in the questions and the answers by this professor. As far as cooperation is concerned, the transcripts indicate very clearly the thinly veiled hostility of this respondent, both to the questioning and to the organizations which are referred to in the first transcript in connection with his membership or activity, which were received from Washington sources.

Therefore, I just want to say about the professor's intimation that I have sought by release of transcript to the president of the University of New Hampshire to establish some sort of a violation of the spirit of the Supreme Court opinion, the professor knew perfectly well. With respect to discussions with President Chandler, I have documents, but I can not testify. I will not testify, but I will say this, that if there has been any notoriety in this case in respect

to Professor Daggett, it has been because Professor Daggett has deliberately taken a course of action which he knew would bring it on. I made that very clear to him in the first transcript. I sought to avoid it. The transcript of his first hearing was given to the president of the university in an effort to persuade the president to discuss it with the professor, and if the professor had information concerning Communists or Communist front activities, then we wanted him to give it to us voluntarily and fully.

In the first meeting with the professor I had a very difficult time explaining to the professor that this wasn't a game, that this was a matter of deadly seriousness; and I simply want to say that all the while I was doing that I was astonished in my own heart that in 1954 there could be a man, much less a professor, who took the position in his answers that he had never seen any evidence convincing to him that the Communist Party U. S. A. sought the overthrow of this government by force and violence.

I respectfully request the opportunity now, your Honor, to have Mr. Daggett take the stand, and to put to Mr. Daggett the questions as they appear in the transcript which is on file in the petition, and I pray that your Honor direct the professor to answer the questions.

Mr. Phinney:

* * * * * * *

[fol. 114] Now, as the Court knows, Mr. Sweezy has filed an answer first directly denying or replying to the allegations set forth in the petition seeking to cite him for contempt, and, his further answer is as follows:

That he has testified under oath in answer to the petitioner's questions that he is not now and never has been a member of the Communist Party, and he has never attended any meetings of the Communist Party within or without the State of New Hampshire. I am citing portions of the transcript. That he recognizes and accepts as a law-abiding citizen the fact that the Legislature of the State of New Hampshire authorized the petitioner to make a full and complete investigation with respect to violations of the Subversive Activities Act of 1951 and to determine whether subversive persons as defined in said Act are

presently located within the State, and has testified that he has absolutely no knowledge of any violations of any of the provisions of said Act, and no knowledge of subversive persons as defined in said Act being presently located within the State.

He further answered that without conceding, and in fact expressly denying, petitioner's right to ask them, respondent has nevertheless answered under oath many questions concerning himself and his activities, in many instances when questions had no apparent relevance to said authorized investigation and encroached upon constitutional guarantees of freedom of speech and association.

Respondent is an economist, teacher and writer who is and has been a Socialist for many years. He has advocated Socialism for many years, and asserts that he is legally entitled so to do. The Socialism which respondent advocates is public ownership of the means of production. It does not involve the use of force and violence. There would be private ownership of property, and a peaceful transition from a capitalist economy would be possible. The respondent favors compensation for all privately owned means of production. The respondent not only doesn't advocate force and violence to effect a transition from a capitalist economy to a socialist economy, but he deprecates it. The respondent believes that it is possible to achieve Socialism constitutionally and with a preservation of traditional civil liberties.

The respondent further answers that the petitioner abuses his authority to conduct the investigation in a patent effort to control the thoughts, ideas, philosophies and associations of the respondent which said Chapter 307 clearly does not authorize, and which the First and Fourteenth Amendments to the Constitution of the United [fols. 115-135] States of America prohibit.

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[fol. 136] Mr. Millinet: That is all I need, your Honor. I just want to show it has been available to the Attorney General prior to the time that this man was summoned to appear. I offer to prove, if there is any question about it, that the reply to Mr. Conner's letter of December 2 was

December 11, 1953, and I therefore would like to read this reference here about Professor Daggett. And I ask the Attorney General to produce, so the record will be complete, the reply they received on January 11, 1954, from President Chandler, the then president of the university. I offer to prove there are two men referred to in Rumor No. 6 which is discussed in this mimeographed report. And I offer to prove—You want to follow me?

Mr. Wyman: No.

Mr. Millimet: I offer to prove that it's possible to distinguish between the two men by the course. One man is referred to as a teacher of a course on Chaucer. Professor Daggett is available to testify that was not himself, but the other man. With respect to the second man, I'd like to submit the following. "It has been said to me that the same faculty members mentioned above have been guilty of neglecting their official duties, and of carrying their political views into the class room. With respect to the first count, I wish to present excerpts from the report of the chairman of the department in which both men serve." I will skip the first.

"With respect to the second man, the report states, 'He has been the most sought after professor in the department. He gives of himself wholeheartedly not only in the classroom, but in his office. His teaching is filled with his [fol. 137] enthusiasm for the subject matter he teaches,'" which incidentally is English, your Honor. Omissions. "'As a teacher, he has the respect of all of his colleagues because of his sincerity, because of the promptness with which he attacks work to be done, and the thoroughness with which he does it and because of the constant attention to the intellectual welfare of his students.'"

"With respect to the second count, i.e., the carrying of political views into the clasroom, I think you will be interested in the report I have had from the Student Council of the University. As I am sure you know, the Student Council is the male student organization for student government. It has twenty-eight members who represent all of the student activities on campus. It enjoys the confidence of all students, and therefore is in a key position to know what is going on in the student body. It reports as

a result of its own investigation the following conclusion: 'From our observations and own personal knowledge, we have not been able to find or discover any facts or evidence that subversive activities exist in the classrooms or on the campus of the University of New Hampshire. No student to the best of our knowledge possesses evidence that such a situation exists. We have inquired rather extensively of students whether or not they have been subjected to classroom propaganda or professorial advocating of subversive doctrines. We have received no evidence or testimony of any such activity.' " .

Now, this was, as far as I know, what the Attorney General's office knew about Professor Daggett. And I am somewhat puzzled as to why they felt impelled to subpoena him in the beginning. It seems to me that they had a prima facie case.—I'd like to have it marked later.—It seems to me they had a prima facie case, all right, but the prima facie case was one of irrelevancy, not of relevancy.

Mr. Phinney: That was in answer to an inquiry about Rumor number what?

Mr. Millimet: Six. There is another rumor in that immediately preceding that one concerning political activities at the university among the faculty.

Now, if the Court please, what has happened to Professor Daggett since that report was made? He is the same man, manifestly. The Attorney General has freely and generously stated in open court today he does not think Professor Daggett is a subversive person under the statute, so obviously he has no evidence upon which he would make a claim of violation of the statute by the professor. What it all comes down to is that Professor Daggett is said to have invited, permitted, sanctioned, listened to, and encouraged perhaps, Paul Sweezy to give a lecture at the university. If the relevancy of these questions is to be [fol. 138] established, therefore, I should suppose it would have to be on the basis of something about Paul Sweezy. Now I said this morning, and I reiterate, that in my opinion that would not be sufficient evidence of a finding of relevancy, because relevancy must go to the subject matter under inquiry, under the statute, and not to the other activities of the person. But I offer some evidence about

Paul Sweezy because the record is barren, and I think it would at least be helpful to have some. One of the first things, I submit, that anybody would want to know if he invited someone to lecture on Socialism was whether he was qualified to lecture about Socialism. And I think before I get into that I will offer at this time the Syllabus of the course in question.

Mr. Wyman: Your Honor, I have no objection to my brother's continuing ad infinitum with these offers, but in view of the offers made I now expect to read into the record certain materials which are contained in our files, and I just want my brother to understand that if he continues with these offers.

Mr. Millimet: So the record will be plain, I will repeat what I stated at the pretrial hearing. I have no objection to the Attorney General reading into the record anything which has been available to me. I have read nothing into the record which has not been available to him.

Mr. Wyman: That is precisely the point, your Honor. I shall read into the record materials which are in our files which have come to us from such places as the House Committee on Un-American Activities and testimony which has been taken in this probe which has been kept secret which bears upon these individuals who are here in court today and tomorrow.

Mr. Millimet: I would certainly object to the offer of that testimony.

Mr. Wyman: I am not making an offer of proof. I am going to at least suggest to your Honor that in view of the fact that Mr. Millimet has said repeatedly that I have no basis whatever for questioning this professor that I'd be delighted to make representation to your Honor, either privately or in open court, as to the basis upon which it has been deemed to be necessary to question this professor.

Mr. Phinney: So that the record may be clear, I'd like on behalf of Mr. Sweezy now to definitely object to any such offers of that fashion. I have no objection whatsoever, your Honor, to offers of proof or to the presentation of evidence, before your Honor to enable him to pass upon the relevancy, pertinency, of any of the questions sought to be asked here. Beyond that, I want the Court to know that at the outset, I shall most certainly object.

The Court: I will pass that bridge when I get to it.

[fol. 139] Mr. Millimet: One of the questions which was asked Professor Daggett was whether or not Paul Sweezy had lectured, and I think in our answer we waived refusal to answer because it had already been answered by Paul Sweezy in the other transcript. Just so the record will be plain on that, and so there will be no question about there being any attempt to conceal it, that is the only reason I offer the Syllabus. I offer the Syllabus, which I offer to prove through Professor Daggett was available for sale at the book store in Durham for ten cents, and since the Attorney General presumably wants to economize in the use of his funds. It was available to him for ten cents.

In the Syllabus it states plainly that Paul Sweezy lectured, and it gives the date and the subject matter of his lecture. Week of March 23, this is the year 1952-1953, week of March 23, lecture, Socialism, Mr. Paul Sweezy. And lest there be any mistake about the rest of the week—Recitations I, II, and III The Communist Manifesto.

The Court: Do you want to have that marked?

Mr. Millimet: Yes.

(Statement of Arthur S. Adams received and marked Exhibit No. 4.)

Mr. Millimet: Please mark this one.

(Syllabus for 1952-1953 received and marked Exhibit No. 5.)

Mr. Millimet: This is the Syllabus of the entire course.

The Court: I understand.

Mr. Millimet: And I offer also Syllabus for the year 1953-1954, which also recites week of March 22, lecture, Socialism, Mr. Paul Sweezy, Recitations I, II, and III, the Communist Manifesto.

And lest there be any misunderstanding on the part of the press or anybody else who may report publicly what goes on here, I would like to call attention of the record and of those who are listening to the fact that in the previous week they had discussed the Declaration of Independence and the Declaration of the Rights of Man, which I think may be identified as the French equivalent of the

Declaration of Independence. And they had discussed selections from Thomas Paine and Ralph Waldo Emerson.

(Syllabus for the year 1953-1954 received and marked Exhibit No. 6.)

Mr. Millimet: I might say parenthetically, as the Court may very well know, Ralph Waldo Emerson was quite a radical in his day. It may be recalled from American history that once when he was invited to speak at the Harvard Divinity School he gave them such a searching and radical talk that they didn't invite him back for 30 years. And I think that perhaps Mr. Sweezy has fared better at the university, which might give some idea. I am not trying to be [fol. 140] funny, your Honor. I just want to give some idea of the historical prospective involved in this question. If the officers of the Harvard Divinity School thought Ralph Waldo Emerson should not be invited back for 30 years, they must have had what they thought good reason for it; and yet the officers of this course have invited Mr. Sweezy back, I offer to prove, for three successive years. And the names of the persons who run the course—I probably should not have done this; I am sorry—are written on the front of the Syllabus for the year 1953-1954. I offer to prove them through the professor, if necessary.

So here we have a course in which among other things they are going to discuss Socialism. Now I don't think there is any mystery about it, and I think the Court can take judicial notice of the fact that Marxism is the philosophical and economic foundation for Socialism. The Attorney General may feel there is a difference between Mr. Norman Thomas' views of Socialism and Paul Sweezy's views of Socialism. Well, it has been my experience, and I am sure it's a matter of public knowledge, that these Left-Wingers have all kinds of differences; and that what one Socialist thinks is the doctrine, another one is very likely to think is an anathema to the doctrine. And I call the Attorney General's attention to a lecture he and I both attended on Friday night at Hanover, New Hampshire, where our education was improved by listening to Professor Adams denounce the imperial conduct of the Soviet government, which he very ably denounced and documented; and amongst other things he referred to the

Trotsky movement, which is well known. Trotsky is a Communist, but he is a splinter from the Russian Communists, and above all things they hate Trotsky, according to Professor Adams. And he also mentioned something which is very interesting in this connection, which I am sure the Attorney General will recall, namely, that they don't even read Marx in Russia any more; that it has all been superceded by a primer, some long name I forget, which is utilized which is the foundation for all their conduct and was written supposedly by Stalin. So that this question of Marxism pertains equally to Socialism as it does to Communism. And when we get involved in a matter of what Karl Marx believed and what Lenin believed, I submit we are getting to a point where the most you can do is read the books.

However, it's perfectly plain, and I offer to prove, that Paul Sweezy was well qualified to deliver the lecture on Socialism, and that his being invited there, whether by Professor Daggett or the other members of the staff, or by the officials of the university, or who invited him, was well in keeping with proper conduct of the course. And I have asked Mr. Phinney to furnish me with, and I have here, a statement of Mr. Sweezy's qualifications, which I will if necessary prove through Mr. Sweezy who is here. Have [fol. 141] you got a copy, Mr. Phinney?

Mr. Phinney: Yes.

Mr. Millimet: I offer this statement and offer to prove the facts contained herein, and for the purpose of orderly proceeding I will just refer to them. It includes among other things his educational background, Phillips Exeter Academy, Harvard, London School of Economics. It includes his experience as a teacher at Harvard. It includes honors which he has won, his military service, government jobs he has had, books he has published, and a statement of his current activity as co-editor of the Monthly Review. It includes also reference to something which I think is of particular importance to the subject matter we are concerned with here. It refers to an issue of Fortune Magazine which had an article entitled "The Economists" by John McDonald in which the following passage occurred. "'Exactly what forms the new classical synthesis is tak-

ing we shall come to presently. But first look at two other schools of economic thought.' Omissions. 'These are the Marxists and the 'institutionalists.' These three schools, each more than a hundred years old, encompass most of modern economic thought.' Omissions. 'Marxian economics has never amounted to much in the U. S. or England, and at the present time Paul Sweezy (The Theory of Capitalist Development, 1942)'—the name of a book, apparently, from the way it's written—'is the only Marxian economist in the U. S. who has any professional standing.' Professor S. E. Harris of Harvard wrote in his editor's Introduction to Sweezy's Socialism: 'It is fair to say, the editor submits, that it (the book) is by the leading Marxian in the United States.' ''

Have your got a copy for the Attorney General?—The Attorney General indicates he knows about Mr. Sweezy's professional background. I'd like to have it marked so the Court may have an opportunity to examine it.

(Copy of Paul M. Sweezy Qualifications received and marked Exhibit No. 7.)

Mr. Millimet: Now it's plain from that record that Marxism and Socialism are intimately related. In other words, the identification of Mr. Sweezy as the leading Marxian in the United States is made by referring to the fact that he is the author of a book called ''Socialism,'' and I think if the Court will examine the writings of Karl Marx they are referred to throughout the system as Socialism.

Now, I am not trying to prove here that Soviet Russia is an innocent follower of the Socialist doctrine as originally laid down by Marx. Quite the contrary. But the point is, this is a subject of interest and importance to the students of the university, and Mr. Sweezy was, on the sur-
[fol. 142] face at least, a proper person to deliver the lecture.

Now what does the Attorney General offer as indicating that he should go beyond what would ordinarily be considered a right of free speech? What does he offer in this record? Well, among other things he offers a quotation from an article that Mr. Sweezy is alleged to have written

in part. I have it here, if the Court please, and I will offer it as soon as I dig it out from under these papers. I refer again, if the Court please, to the Attorney General's argument in the beginning of this hearing.

Most of his remarks pertain to the evils of Communism, in which opinion I fully share his views and in which I concur he had authority to inquire, but that is another thing from what he is seeking to do here, and his quotation from the article in the Monthly Review badly misrepresents Mr. Sweezy's position because it failed to disclose one thing which I have never heard a single Communist do and that is criticize the Soviet Union. I think the Attorney General will agree that Communists don't go making public statements about the evils of the Soviet Union. I would like to read in part from this same article from which the Attorney General read in part.

This article, incidentally, is titled, "On Trials and Purges," and starts off with a discussion of anti-Semitism. It says here, and I quote, "And yet the labeling of accused persons as 'Jews,' the repeated use of the phrase 'Jewish bourgeois nationalist' instead of 'Zionist,' the listing of obviously Jewish names in connection with derogatory or contemptuous remarks—what are we to say of practices like this, which, if they occurred in any capitalist country, the entire Left would join in condemning as blatantly anti-Semitic? For our part, we do not believe that they are any more excusable in socialist countries."

I am going to omit things that contain a lot of references to Hitler and so forth and come down as follows. "If now even the slightest symptoms of anti-Semitism appear in the socialist countries we can only regard it as a matter of gravest concern to socialists everywhere."

Excuse me, your Honor. This is a fairly long article. I am trying to find one short passage in connection with the part which my brother read. Immediately after that part appears the following: "We do not draw the conclusion that one must justify everything that happens in the socialist countries," which I submit is a conclusion the Communist Party always justifies and one which has been on the record in the Dennis case that they shift the line every time Soviet Russia decides to take a new tack; and I con-

tinue to quote, "The new society is being born under the most difficult conditions. It is, as Marx predicted it would be, 'stamped with the birthmarks of the old society from whose womb it emerges.' Its leaders are mere human [fols. 143-153] beings, with limited equipment and working under terrific pressures. It is bound to commit stupidities, mistakes, excesses. And we think it is a service to the cause of socialism to say these things quite frankly, to criticise what seems to deserve criticism, to condemn what seems inexcusable.". I submit the article for the Court.

(Received and marked Exhibit No. 8.)

* * * * * * *

[fol. 154] (June 29, 1954)

Mr. Wyman: May it please the Court, I don't know whether I should rise to a point of personal privilege or not in view of some of the very personal remarks which have been made in reference both to myself individually and to the conduct of the investigation as it affects these two respondents. Both Attorneys Millimet and Phinney have made some fairly serious charges reflecting upon both the good faith of the Attorney General, the Governor, and the conduct of the investigation in New Hampshire. But there is enough here so that I will do nothing further than try to point out to your Honor the reasons why I believe as a matter of law they are incorrect in their conclusion that the questioning of Mr. Daggett in this particular case as proposed is not relevant.

Now first off, there appears to be some confusion as to the status of this matter. As I understand the law, I am not asking your Honor to find Mr. Daggett in contempt of court at the present time. I am asking your Honor to put questions to Mr. Daggett because I can't put the questions to him with the power to find him in contempt if he refuses improperly to answer. And it would only be if Mr. Daggett then again refused that there would be any question of contempt. So there is some misconception about that, and I think perhaps that clarifies it, in part at least, in so far as the State's thinking is concerned.

Now, Mr. Millimet actually, your Honor, has answered the question of relevancy in his argument yesterday when he said that when Mr. Sweezy refers to a socialist country he refers to the Soviet Union. I ask you just for a moment in connection with that to consider this in connection with the statement that Mr. Phinney made that while he wasn't going to testify about what Mr. Sweezy's lecture concerned at the university on the 22nd, he would go so far as to say that it had to do with Socialism. He didn't want to make an offer of proof because he felt that the issue in the case, in so far as Mr. Daggett's and Mr. Sweezy's interests were coterminous, involved the question of whether you could compel a discussion about the content of that lecture.

If his lecture was about Socialism, and if that Socialism is the Socialism that exists in the U. S. S. R., then I submit that it is entirely relevant to inquire whether that is Marxism or Communism, or whether it is advocated to the students or not. If he made the statement to them that that kind of Socialism is inevitable in America, that is not teaching; as a matter of actual fact, that is advocacy, because to say something is inevitable is not to present it objectively at all but is to implant within youth the idea that the social system which exists in a Communist country is inevitable in America.

[fol. 155] Furthermore, I submit that it is entirely clear that it is impossible for a Marxist or a Communist to ever be objective in any teaching. Certainly, it is one of those things where the record of history is replete with illustration after illustration that they follow a line which is for them determined by those above them; and any deviation from that line is very seriously met with recrimination at once. And, of course, Mr. Sweezy never has been entirely accepted amongst some of his associates as a pure—as a pure Marxist or a pure Marxist dash something else because some of his writings have deviated, and that is apparent. But it still is, nevertheless, important and relevant to inquire concerning what line he took at the University of New Hampshire.

This is a tremendously important, vital matter as it relates to this investigation, because if your answer, your Honor, to this petition is no, these questions are not relevant, it stays the entire investigation. I don't say that that

would be a matter which would cause a catastrophe in New Hampshire at all, but I do say it would be a long time before the Supreme Court would pass upon this question, even if the State took an exception. And I do say this much, as a matter of law there is only one question here; either these questions are relevant, pertinent, or they are not. If it's pertinent to the investigation, then I think that the legislature is entitled to an answer.

I would like to again read from a portion of the act, the basic act, because Mr. Millimet and Mr. Phinney have both indicated that they think it is astonishing that I should conclude that I had the authority to question about these things. They say that the precept within which the legislative committee of the Attorney General's office, if you wish—I still refer to it as a legislative committee because the Supreme Court in this state has said that is exactly what it is—and I will quote from that opinion in a moment. The precept is actually broader in some respects than the Un-American propaganda limitation to the House committee on Un-American activities, and this is the expression when they define subversive persons, and I will pass all this question of actual outright advocacy of the overthrow of the country by force and violence. They say a subversive, and "they" is the legislature, is one who is a member of a subversive organization or a foreign subversive organization.

Now that immediately raises the question of whether they have been a member of or whether they have been so active in as to achieve the status of membership? I don't know what membership is, I am sure to admit that. But have they been so active in subversive organizations as to warrant the presumption that they are still a member? Or to warrant the presumption that their credibility is seriously at issue when they make protestations that they are [fol. 156] not presently a member?

Now, if an organization is Communist-controlled, it's subversive. It isn't any longer open to the court or to me to say that it isn't. It isn't open to Professor Daggett to say that the Communist Party is not subversive. The legislature has said it is in New Hampshire. That is the law in New Hampshire. And if a subsidiary organization

is Communist-controlled, then for the purpose of this inquiry it is subversive. And certainly questions about the activity of any individual, Mr. Sweezy or Mr. Daggett——

Mr. Millimet: Excuse me. I hate to interrupt my brother, but I don't know whether I will have a chance to answer the argument which is now being made or not. It wasn't made before. If I will, I will not interrupt.

Mr. Wyman: That is all right.

The Court: Yes, I will give counsel an opportunity to answer.

Mr. Millimet: All right. Thank you.

Mr. Wyman: If an organization is in that category, then the present or the past membership in, or association with, or activity for, any of those organizations, or any of those organizations as to which I have reasonable ground to believe they are Communist-controlled, and I submit regardless of Brother Phinney's characterization of the attorney general's list as entirely unworthy of any credibility whatever, it does, when it says an organization is Communist-controlled, it does afford reasonable ground to believe that there is reason to question about whether or not X was an individual active in that organization; and if he was, what were the organization's purposes? Were the organization's purposes subversive or not? If they were not, or if the witness knew nothing about it, he is at liberty to say so. But even under the Supreme Court opinion in Nelson v. Wyman it still is the law that a person may meet the test of being a subversive person without any felonious stigma at all, without any penalty at all by being a member or continuing to be a member of one of these organizations that is Communist-controlled without knowing its purposes.

I offer the Court at this time, I don't know if the Court has it, a copy of the brief in Nelson v. Wyman. It has been said that the Attorney General has no reference to constitutional principles. It has been said by Mr. Millimet that it is astonishing, and he doesn't know quite how to meet an argument that never once talks about legal constitutional tests. I think that is what he said yesterday. And I want to simply say there are 106 authorities cited in that brief; that every case Mr. Millimet made reference to yesterday, Weiman v. Updegraff; the Bowers case appears in

the brief to and opinion of our Supreme Court. I don't know whether the Cox case is in there, but I believe all the [fol. 157] other cases referred to are not only in that matter, but have been carefully considered by our highest court in answering the questions that have to do with this investigation, this particular investigation in this state.

Now, if a witness says that an answer to a question or the question itself is not relevant, it's not pertinent, I submit there are many tests besides the test which was used in United States v. Orman, which incidentally, your Honor, is clearly an authority in favor of the rights of the state to inquire of these witnesses, there are many other tests, many other reasons why the questioning is proper. The question of whether or not you believe the witness is a very, very important basis for affording the right to ask a question. Obviously, my brethren believe their clients. I don't.

Now, if they make a statement that they know nothing about activity in an organization, or they don't know the reason why they worked for an organization, if they did, or they don't remember, then I believe it is entirely proper to question them concerning other facets of their conduct which bear directly upon their credibility in their protestations that their activity was entirely naive or entirely beyond their knowledge at the time of any stigma or any subversive epithet as applied to any organization they worked for whether cited as communist controlled by the national attorney general or otherwise.

Then there is also the question of relevancy in respect to facts. What were the facts? Mr. Daggett, in his first transcript, indicated he attended a meeting at which there were some people believed by him to be Communists. Then he said he was willing to say he had been there, but he wasn't willing to name other people; and a part of the reason why that meeting was adjourned was because I thought he should have counsel.

Mr. Millimet again in his oral argument, beside his written argument, indicated that he thought that my release of the transcript to President Chandler violated the rights of his client. I merely wish to read to your Honor the last paragraph of the actual transcript of that Decem-

ber 29, 1953, meeting at which I said to Mr. Daggett, "Let the record show that at this point the private hearing was recessed with a view to affording the witness an opportunity to consider the question of whether or not he wished to proceed further with the hearing, after discussion with the President of the University and considering the question of private counsel, at a later date to be mutually agreed upon." He knew I was going to take this up with the president, and when I wrote to the president. I'd be glad to show you the letter of transmittal, if my brother wishes, in which I said, "I send a copy of Mr. Daggett's testimony. It raises some major issues of the time. I send it to you personally and confidentially. I hope you will talk with him so it will be possible to resolve this thing [fol. 158] without the slightest stigma on the University of New Hampshire or on Professor Daggett.

COLLOQUY BETWEEN COURT AND COUNCIL

Mr. Millimet: Since my brother has testified to what is in the letter, I suppose we'd like to have it here.

Mr. Wyman: I will produce that in a moment anyway.

The Court: All right. You may continue and produce it.

Mr. Wyman: Now, your Honor, replete in the arguments of both the attorneys here yesterday were the statements that there was no basis to question these witnesses.

Mr. Phinney: To that I must object, your Honor. I have never raised that question.

Mr. Wyman: Well, I will withdraw that.

The Court: You withdraw that as far as it applies to Mr. Sweezy?

Mr. Wyman: I withdraw that in view of Mr. Phinney's present remark. Perhaps my memory with respect to Mr. Phinney's statement yesterday is inaccurate in that regard, but I certainly think Mr. Millimet said he couldn't understand why I was questioning Professor Daggett.

Mr. Millimet: I think as how we have had the record written up and it has been available to the Attorney General I'd like to read it at this point. What I said was: "Now I also question somewhat the inquiry into Professor Daggett in the first place." That is what I said. I didn't

say there was no basis for it. I said "somewhat", which is a different thing, I submit.

Mr. Wyman: I submit, your Honor, even this excerpt here is not the composite of the remarks made by Mr. Millimet yesterday, which were to the effect that what is the reason for questioning my client; and I therefore, for that purpose only and for the purpose of showing that we had some reason to question Professor Daggett, offer information from the files of the Committee on Un-American Activities in the United States Congress under date of November 24, 1953, in reference to Professor Gwynne Daggett.

The Court: All right. It is admitted for that limited purpose. You may have an exception.

Mr. Millimet: May I state my grounds, if the Court please?

The Court: Yes.

Mr. Millimet: I object to the evidence, first because it constitutes a hearsay statement of basic things which are referred to therein, and it is based upon a standard not known to this Court, at least in the record. I have no knowledge of the Court's extrajudicial knowledge. Certainly, not known to counsel. And on the further grounds that offered alone, if the Attorney General simply offers it alone, I submit that the evidence itself has no tendency to show a reason for questioning Professor Daggett if [fol. 159] there was no attempt to inquire into the citations therein and find out whether they were in fact warranted. And in that connection I offer this letter which is one of the things cited in the excerpt which my brother has just offered to the Court.

Mr. Wyman: That is already an exhibit, isn't it?

Mr. Millimet: I am going to say that. This was at my request marked as Exhibit 1 for identification at the time of the second transcript, which I attended. And as illustrating the point that I am trying to make, the unfairness of inquiring in this investigation with a limited type of authority on the basis of what is in that letter from the Un-American Activities Committee, I'd just like to read the last two paragraphs of this in which Professor Daggett's name appears to be affixed.

"In the hearts of many there is a longing for the old grave days when Americans spoke in clear accents as did the once jailed Thoreau who said, 'The law will never make men free; it is men who have got to make the law free. They are the lovers of law and order who observe the law when the government breaks it.'

"In the spirit of this tradition we the signers of this letter, while we do not associate ourselves with any or all of the general ideas of the four Trustees of the Bail Fund which are not in issue, do support and call upon you and all Americans to likewise support the due process of law, the right to bail, the Fifth Amendment and other provisions of the Bill of Rights by acting now to free these four prisoners."

Just so the record will be clear, that is a letter addressed to J. Howard McGrath, Attorney General of the United States, with reference to the jailing of four trustees of the Bail Fund who were trustees of a fund that was put up for the 9 Communists, if I recall correctly.* There was a serious legal issue involved as to whether they had to locate those missing Communists, and it went to the Circuit Court of Appeals and one of the judges dissented. I am sorry I don't have the citation, but I will furnish it for the record. I read the case last night.

I submit when the Attorney General receives this information it is incumbent upon him to make some investigation of the validity of the information and the purport of the information before he rushes into an inquiry of the man concerned. And I therefore state that even what he now offers do not offer a valid reason for summonsing a professor and inquiring concerning his conduct in this investigation. As support for that, I urge upon the Court the standards which the Attorney General's office placed [fol. 160] upon Professor Daggett in the inquiries addressed to him on page 22 of the second transcript. "Mr. Conner: Do you ever make any determination before you allow your name to be used by groups as to whether or not they are Communist-front groups within a designation of the various Congressional committees or the Attorney

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* -Photostatic Copy rec'd and marked Ex. No. 12.)

General of the United States? The Witness: Well, I would attempt to, yes." I submit to the Court that the same duty is upon the Attorney General, and before he goes into this he should make some investigation.

The Court: I have heard all the arguments I desire to hear on the question. I am admitting it not as any evidence of the truth of the matter contained in this 2-page document. Of course, it is entirely hearsay. I am admitting it solely for the purpose for which it was offered, to show the reasons why the Attorney General questioned Professor Daggett and for that limited purpose only. I will save your exception to its admission for that limited purpose.

Mr. Millimet: Thank you.

(Information received and marked State's Exhibit A.)

Mr. Wyman: Before going into Exhibit A for the State——

The Court: You understand the Court is able to read that exhibit. It will save some time if I read it.

Mr. Wyman: I understand that, your Honor. Is your Honor suggesting——

The Court: Your Honor is suggesting that if you read it, there is only one obvious purpose for your reading it, which is not to bring it to the attention of the Court. You may read it if you so desire.

Mr. Wyman: Your Honor, Brother Millimet has just read a couple of portions of it, an excerpt from a letter of J. Howard McGrath, in which again, by an effort at circumlocution of the English language those who adopt a certain course of conduct seek to avoid it in the name again of this confused concept of freedom of speech or academic freedom. This open letter, wrote the Attorney General of the United States, criticizing finding in contempt of court the leaders of the Civil Rights Congress of the United States is criticism as intemperate as is the spirit in which the witnesses who were found in contempt refused to produce in Court the evidence of the names of the contributors to the Bail Fund. Frederick Field was not held in contempt because he refused to answer questions dealing with the disappearance of four Communist leaders from the Bail Fund. This is proved by the judge's own testimony.

Field was held in contempt because he refused to turn over to federal authorities the names of thousands of contributors to the Bail Fund of the Civil Rights Congress.

Now, without getting into anything which appears in any of these excerpts from the Committee on Un-American [fol. 161] Activities, may I simply state that the Civil Rights Congress has been designated as subversive and Communist-controlled by the House Committee on Un-American Activities and by the national attorney general repeatedly. If people have been active for subversive organizations cited as such by responsible authorities in this country, what for? What is their purpose? How and over how many years can they claim that they are not chargeable with knowledge of such purpose?

Mr. Millimet: Excuse me, Your Honor. In view of the statement just now by my brother, I must elaborate on my objection and probably should have done it before, and state that I consider this evidence incompetent in view of the decision which I cited yesterday, Barsky v. Board of Regents of the State of New York, which is in the advanced sheets of the Supreme Court opinions, and which relies upon the Joint Anti-Fascist Refugee Committee. There has been a lot of confusion here, and I am still not perfectly plain in my own mind, despite the assurances of the Attorney General, as to what the nature of this proceeding is. Regardless of the status of the matter at the moment, this is ultimately an attempt to invoke the criminal contempt powers of the court, and we have adopted a procedure whereby we present the argument in advance of the asking of the questions for the sake of convenience, but I assume that things which are offered here now will be available when the Court determines, decides to make the decision; and I must therefore object to what I consider to be incompetent evidence under those cases. And just so the Court will understand my point on the question of the nature of these proceedings, I wish to refer the Court to two New Hampshire cases which have not been cited because the question hasn't come up before, State v. Matthews, 37 N. H. 450, and Bate's Case, 55 N. H. 325, both of which hold that a proceeding for contempt is a distinct and independent matter and is to be regarded and entitled

as of a criminal character. And I therefore urge upon the Court to rule that the rules of evidence should be enforced. I refer the Court to 12 American Jurisprudence, Contempt, section 74, page 441.

Mr. Wyman: Your Honor, I am trying to make merely a prima facie showing as to the reasonableness of the questioning of these respondents, more particularly with respect to the lecture by Professor Sweezy at the University of New Hampshire.

Mr. Millimet: I am very anxious to get the record straight. Am I to understand that you do not offer any of this evidence as a basis on which the Court could rule that a failure to respond to the questions would be contemptuous?

Mr. Wyman: I offer this evidence for the purpose of establishing prima facie the questioning of this witness in this court by the Court in respect to the matters which [fol. 162] appear in the petition is relevant and pertinent to an investigation of subversion in the State of New Hampshire.

Mr. Millimet: I guess I'd like to have that answer read because I am not quite sure I understand that.

The Court: You mean that last statement? All right, I guess I would like to, too.

(Statement read back.)

Mr. Millimet: I am a little confused about that prima facie in there. All I want to find out, your Honor, is this. As I understand the procedure we have agreed upon, eventually, under some circumstances, assuming certain preliminary rulings by the Court, Professor Daggett would have to take the stand, at which time questions would be put to him.

The Court: That statement assumes a certain ruling by me.

Mr. Millimet: Yes; and certainly I am the last one that wants to make any such assumption. But the reason I raise it now is I understand the arguments are all being made now. That is correct, isn't it, your Honor?

The Court: That is correct.

Mr. Millimet: So I feel I have to raise it now.

The Court: Well, in any event, my original ruling with reference to the admission of this testimony stands. It has been admitted for the limited purpose for which I admitted it at that time, regardless of any questions of fact which may have now been put on it by the Attorney General. It is limited to the use for which I admitted it originally.

Mr. Millimet: I am sorry then, Your Honor, to have raised this issue because I didn't understand.

Mr. Wyman: I have now found, your Honor, the letters in respect to President Chandler, and I find another letter to Professor Daggett on January 4 of this year by me saying, "Dear Professor Daggett: I have today sent a copy of the transcript of your testimony to President Chandler for his personal and confidential review. I expect that when he has read it he will contact you, and my letter to him indicates that, should either of you wish to confer further with me at any time, you have only to let me know."

Mr. Millimet: I'd like to have them marked for identification, your Honor.

The Court: All right.

Mr. Wyman: Now in connection with the lecture at the University of New Hampshire by Mr. Sweezy, this time confined to the lecture which was given on Monday, March 22, in a letter written to me on March 30 by the head of the [fol. 163] Department of Government at the University of New Hampshire, "I have heard Sweezy on the campus several times, he comes by invitation"——

Mr. Millimet: Excuse me. I must object to the reading of this, your Honor, unless I understand the purpose for which it is offered.

The Court: Is this an affidavit you are reading?

Mr. Wyman: It is not; no, your Honor. It is again of the same nature and offered for the purpose of showing merely as agreed that this was a basis for questioning Mr. Sweezy in the transcript, the second transcript, after this was received, about the content of his lecture.

The Court: Well, this is an entirely different point. May I see what you have there?

Mr. Wyman: Yes.

The Court: I take it this is not being offered for the limited purpose that the original material is being offered?

Mr. Wyman: Yes, it is, your Honor. The red is all that I am reading from.

The Court: Well, are you prepared to call this witness?

Mr. Wyman: I don't believe, your Honor, that I am required to produce evidence in this proceeding unless the Court directs that evidence be produced by witnesses. I would be delighted to call this witness, if necessary, but in determining the relevancy of the question with respect to this lecture I don't conceive that it is necessary to do anything more than look at this background which exists here with respect to that lecture.

The Court: Well, now, just so I understand your point clearly, and I think I do now, your attitude, if I understand it, on that argument is that it's merely to show a basis for your personal questioning.

Mr. Wyman: That is all.

The Court: Of the Professor on this particular issue?

Mr. Wyman: That is all, your Honor.

The Court: On the context of the lecture given by Mr. Sweezy?

Mr. Wyman: That is all, your Honor.

The Court: All right. For that purpose I will admit it, and it's limited to that purpose. You'd better show the letter. After I read it, you'd better show it to counsel.

Mr. Miilimet: Excuse me, your Honor. I am sure that the record is quite plain, but I'd just like to make sure again that this is not going to be available on the issue of relevancy for the purpose of deciding whether these refusals to answer were contemptuous.

[fol. 164] The Court: Yes, it is; but I think in the limited sense for which I then stated, and which, as the Attorney General agreed, he was so offering it. In other words, there are two possible methods by which his stand might be taken, if I understand it correctly, on this issue of relevancy. One would be to introduce actual evidence, or make an offer of proof of actual evidence, to show a relation, to constitute relevancy. The other would be to take the attitude, which is, I understand him now, his attitude, that if he has rumors or anything of that nature that would indicate a possible interest by him, from the standpoint of this investigation, in the lecture, then that constitutes and makes it relevant from the standpoint of the investigation. Have I correctly stated your position?

Mr. Wyman: That is exactly it.

The Court: For that limited purpose I am letting it in; not as any evidence of the truth of the assertions.

Mr. Millimet: That is the question of law, of course, we have been trying to get settled.

The Court: I think the question of law is finally clear, Brother Millimet. I don't care to hear argument on that point of law until your time comes to answer the Attorney General. But as far as any further argument you desire to make on the particular use of this evidence or rumor that he is now reciting from, I will be glad to hear you further.

Mr. Millimet: All right, your Honor, so long as I don't waive my objection.

Mr. Phinney: And mine; in so far as it may pertain to my client, I'd like to have my rights preserved.

The Court: I will do so.

Mr. Wyman: This is the last paragraph of the letter dated March 30, 1954, which merely says, "I have heard Sweezy on the campus several times, he comes by invitation to this one particular class. His talk this time was on the inevitability of the socialist program. It was a glossed-over interpretation of the materialistic dialectic."

Now again, and referring this time to the remarks of Mr. Millimet, Mr. Millimet said yesterday, "If the relevancy of these questions is to be established, therefore, I should suppose it would have to be on the basis of something about Paul Sweezy." I offer at this time the record, information, from the files on the Committee on Un-American Activities in respect to Paul M. Sweezy merely for the purpose, again, of establishing that there was reason for the questioning of Mr. Sweezy and reason for the questioning particularly about the lecture at the university, both this time and in the previous years. And I offer it for that limited purpose, again stating that I recognize that this is not one of those items of evidentiary proof which passes the limitations of the hearsay rule for the [fol. 165] purpose of a trial in an action at law.

The Court: It is admitted for the same limited purpose as was the prior evidence with reference to Professor Daggett, and will not be accepted as any evidence of the truth of the matter contained in these four pages, but solely for

the purpose of showing the reasons for the Attorney General's acting as he did with reference to the examination of Mr. Sweezy and his claim of relevancy with reference to the context of the lecture given at the University of New Hampshire. I assume that counsel make the same objections, and I will overrule the objections of both counsel for Professor Daggett and Mr. Sweezy, in so far as it may apply to either of their cases, and save their exceptions.

(Information received and marked State's Exhibit B.)

Mr. Wyman: Again, your Honor, in view of the fact that reference to a reading of this would perhaps seek something which is other than the consideration of the Court, I will not read it at this time, but I will refer to this in the course of my further remarks because it is unavoidable in my opinion in connection with the explanation of this entire pattern.

In the brief in Nelson v. Wyman, and I merely refer to the brief for the purpose of a handy and convenient place of accumulation of materials, there appears a list of organizations at page A22, Appendix 22, which have been designated by the national attorney general as either subversive, totalitarian, Fascist or Communist. It is a pretty long list. There are over 200 organizations, and there have been some additional organizations since this brief was printed, and there are some others which are appended to the list of organizations which are handed to individuals together with their subpoena when they are subpoenaed in this investigation.

In the report from the files of the Committee on Un-American Activities there appears at least prima facie indication that for 17 years or more Paul Sweezy has been active for one or more organizations, several more than one organization, that are on that list.

Now, I recognize, your Honor, that having an organization on that list doesn't make it subversive or Communist-controlled from the point of view of your Honor's finding as a fact here that it is in fact Communist-controlled. But I don't conceive that that test is at all required in the present proceeding. I think it is enough that I indicate to your Honor that there is some reason to believe from cred-

ible sources that the organization is Communist-controlled. And following the deductive reasoning that immediately comes along as a sequitur to that proposition, suppose you had activity of this type over a period of years, what does that mean with respect to the teachings of an individual [fol. 166] whose activities have followed this pattern? What would such an individual—Let's get it down to this lecture. What did such an individual in fact tell students at the University of New Hampshire? If these organizations are Communist-controlled, and are subversive by legislative fiat, did this professor, Mr. Daggett, tell the students that they weren't subversive? That they had no purpose to overthrow the government by force and violence? Questions as to that are submitted to be decidedly pertinent.

If Mr. Sweezy, and I don't say that he was, if Mr. Sweezy was in fact active in these organizations year in and year out, writing for these publications that are on these lists year in and year out, did he know when he did this that they were Communist-controlled? If he did know that, what was his purpose? Did he tell the class at the University of New Hampshire, as appears at least prima facie here, that Socialism in America was inevitable?

Mr. Millimet: Excuse me. He is using it for a purpose which it has not been admitted for, contrary to the ruling of the Court. I must object.

Mr. Wyman: I don't conceive I am, your Honor. I am simply trying to indicate to your Honor the wheels that went around inside when that sort of material appeared in the files of the State's investigation.

The Court: All right. I think it's purely argumentative.

Mr. Millimet: I want the record to show.

The Court: I assume when you are referring to wheels, you are referring to your own mind?

Mr. Wyman: That is correct; that is all. That is all.

The Court: All right.

Mr. Millimet: I didn't mean to raise the question of how the Attorney General's mind works on this subject, but I suppose it has inevitably come in.

The Court: I will permit him to continue and save your exception.

Mr. Phinney: May I say for the record at this time, your Honor, and very briefly, that no question has been raised by Mr. Sweezy as to the right, for whatever reason, of the Attorney General to ask about the lecture. But the issue is, in view of the sworn testimony of Professor Sweezy that nothing in the lecture advocated in any way the overthrow of constitutional government by force and violence, in the face of that uncontradicted testimony, then our position here is that for whatever reason the question is asked in the first instance, no evidence has yet been introduced to make it relevant or material.

Mr. Wyman: Oh, well, let's not argue about whether what one person thinks is advocacy is or is not advocacy. I don't suppose because a witness answers in this investiga-
[fol. 167] tion that he is not and never has been a Communist, and that he is not and never has been active in or for the party, that ends the matter. There are about 200 organizations that if he ever has been active for any time, he must at least testify concerning if he has any knowledge. And I suppose that if a dog is a dog, that if you call it something else, you are entitled on the issue of credibility to examine into other writings or other statements, or other admissions of an individual witness as to what he means when he says it's a cat, if in fact it's a dog.

The questions were put, I say again, for your Honor's consideration of the ultimate question in this case, of whether or not you can ask these witnesses these questions. I am a legislative committee; I am not the attorney general. I happen to be called the attorney general, but the Supreme Court in this state says at page 3 of Nelson v. Wyman, "The legislature's choice of the Attorney General as its investigating committee instead of a committee of its own members or a special board or commission, was not in and of itself determinative of the nature of the investigation. * * * When the legislature chooses to delegate its power of inquiry for the purpose of ascertaining facts upon which it may decide to take action, we see no distinction in principle between the delegation of that authority to the Attorney General and its delegation to a committee

or board." Regardless of whether Mr. Millimet says I misconceive either my precept or my position, the law is settled in New Hampshire, and the motion for rehearing was denied.

Again on the question of the law and the constitutional provisions, I say, and I am willing to make this statement, that neither of my brothers, but particularly I refer in this statement to Mr. Millimet, that he has cited no authority whatever which is proposition for any of the precepts or legal precepts which he seeks to urge upon this court. Either it's minority dissenting proposition or it's a proposition such as the Rumley case which concerned an investigation into lobbying; and there is all the difference in the world between an investigation into lobbying and an investigation into whether or not there is going on in this state the machinations and movements of people who would leave open the door to those who might seek to destroy us.

That is the question. Would they leave it open? Have they left it open? How close does that come to the line? They are relevant and pertinent questions, particularly in view of the background.

I haven't any desire to enter into personalities with counsel. Mr. Phinney says that my investigation, my approach here, is appalling, disquieting, frightening. He deplores my methods. I can't distinguish between dissent and subversion. Your Honor, I am just trying to find out for the legislature whether this is dissent or whether it is subversion. That is all. I don't say that I am an authority [fol. 168] at all. But unless the questions are answered, it is impossible to be able to establish whether this is a manifestation of dissent by one of those rugged individuals for which we are so famous, or whether or not it has crossed the line. Because certainly if we are just dealing here with a person who in the political jargon is a Left-Winger or a Pinko—I don't say that about this Professor; please don't misunderstand me—if we are dealing with that kind of a category, or a Norman Thomas Socialist, I am not concerned. But the record is replete with indications that at least Mr. Sweezy is something more than this. And how much more than this? And whether or not Mr. Daggett knew about it, and whether or not these children, or

these students at the University of New Hampshire were presented with the background of Mr. Sweezy when he lectured, and all these things, are certainly proper, and competent, and relevant, and pertinent questions.

Now, I am not going to do any more here now than refer to the transcripts which alone indicate prima facie that questioning is warranted, and the precise questions are warranted. There is an exhibit, the Principles of Communism, A New Translation by Paul M. Sweezy; this is an exhibit which is in the record. Question 16, in this new translation, I submit to you for your Honor's independent consideration since it is an exhibit.

Mr. Phinney: Has it been marked?

Mr. Wyman: It's marked in the transcript.

The Court: Well, again, it's an exhibit that I have not seen. I know it was stated it would be marked as an exhibit. It was not part of your transcript any more than the other one.

Mr. Wyman: I am sorry. I show it to you now, and I think you agree, Mr. Phinney, that it was marked at the time of the original transcript.

Mr. Phinney: It should have been.

The Court: I am not clear that it was actually marked.

Mr. Phinney: I don't believe it was.

Mr. Wyman: It was identified.

The Court: I don't mean to be criticizing its failure to be included in the transcript because I am not certain it was not marked.

Mr. Wyman: I am not certain either, but do you wish now to have it marked?

Mr. Phinney: I do, indeed.

Mr. Millimet: Excuse me. This is my case. I don't want to be too jovial about it, but I'd like the record to show I have never even heard of this before, and I think if it's going to go in this case I ought to have a chance to look at it.

Mr. Wyman: Since it affected Mr. Phinney's client——

[fol. 169] Mr. Milliment: I understand the procedure, of course. I apologize. I have heard of it before, but I have never read it, of course; and as I understand it, it purports to be a translation. Is that right?

Mr. Wyman: It purports to be a literal translation.

Mr. Millimet: Of Friedrich Engels, who died about a hundred years ago.

Mr. Wyman: This is the draft of Engels in question and answer form of what later became the Communist Manifesto.

Mr. Millimet: I don't have any objection to its being offered at all, your Honor.

Mr. Wyman: I am not offering it except to refer to something which is already in the transcript for the purpose of argument.

Mr. Phinney: For that reason alone, your Honor, I think this would be an appropriate time to have it marked and made an exhibit in these proceedings.

The Court: All right.

Mr. Millimet: I'd like to have it an exhibit, too.

(Received and marked State's Exhibit C.)

The Court: You may use it.

Mr. Wyman: I don't want to use it. I know it by heart, your Honor. Question 16. I simply ask you to look at the question which has to do with the eventual transition of the capitalist system to a Socialist or Communist system.

The Court: Well, Question 16, General, is the one that was included in the transcript?

Mr. Wyman: That is correct; it was.

The Court: All right.

Mr. Wyman: And I call your Honor's attention merely to the negative approach which was used—we will assume it's a literal translation—by Mr. Engels that if the capitalists make it tough enough for the proletariat, then the proletariat may have to use violence in order to achieve a system which has as an end the idea of getting away from violence. But that negative-approach deceives no one of an adult mind. But if that negative approach was given to students who are adolescents, are they in a position to be deceived by that? I don't know. I don't know whether it was given. But I submit that the questio about whether it was is pertinent and relevant.

The first transcript now, page 58 of the first transcript of Mr. Sweezy——

Mr. Millimet: Excuse me. I haven't ever read the first transcript, which is no fault of the Attorney General's, but there is a limit on time. What page?

Mr. Wyman: Page 58.

[fol. 170] Mr. Millimet: May I reserve my objections, because I don't know what he is going to say, your Honor?

Mr. Wyman: I am going to hand this to the Court. This is an edition of the Monthly Review, Volume 5, No. 8. This is Witness's Exhibit B for Identification offered by Mr. Sweezy. I hand this to the Court since it is already marked. It is an official exhibit. I don't know why I happen to have it, but you do not have the original transcript. That is why. I still have the original transcript. We only had one of those.

The Court: Do you desire to have it marked in this proceeding?

Mr. Wyman: It is already, I believe, in this proceeding. I see. It's not in the Daggett case. No, it is not in the Daggett case, if it's in the Sweezy transcript. I do not desire to have it marked unless my brother wishes to have it marked.

Mr. Millimet: Well, of course, I will have to look at it.

Mr. Wyman: The particular page to which it is open, page 434.

Mr. Millimet: I don't feel in justice to my client I should agree to mark or not to mark a thing like this without having a chance to study it a few minutes at least, your Honor. Perhaps I can do it during recess.

Mr. Wyman: Well, all right. It's an exhibit to a transcript which at least in the pretrial conference before your Honor I think were agreed could be referred to in argument in this matter.

Mr. Millimet: That is true, your Honor, but you know, I mean I haven't read the exhibit itself.

The Court: He desires to refer to it in argument. Do you want to let him use it in argument?

Mr. Wyman: I don't need to, your Honor.

The Court: I think it was part of the agreement that the transcript in the Sweezy case should be used in this case if desired, and that was marked as a part of the transcript in that first hearing.

Mr. Millimet: I am not really objecting on any legal grounds.

The Court: I understand that. But what I am saying, if he desires to use it in argument, refer to some portion of it in connection with his doing that, do you want to do it right now?

Mr. Millimet: He can refer to it.

Mr. Wyman: I want to refer to it now.

Mr. Millimet: I'd just like to reserve my rights; yes, sir.

The Court: I understand.

Mr. Wyman: Sufficient of the context of the document itself appears at page 58 of the first Sweezy transcript. [fol. 171] "Mr. Wyman: I note, Mr. Sweezy, in this appendix to the transcript which you offered, which is stated it is the 'Monthly Review' for January 1954, that at page 434, in the conclusion of the article entitled 'The Roots and Prospects of McCarthyism' there is the statement made that 'while we are explaining this, let us not forget that the root of the trouble is capitalism, not McCarthyism. We will never be out of the woods, nor will the world at large, as long as the United States has its present crazy economic system. No doubt that means we have a long way to go. But at any rate let's not lose sight of where we're going.' I take it by that is meant going toward the Socialism you have spoken of here today, and not toward Communism? Mr. Sweezy: That is correct. Mr. Wyman: And I note, also, that at page 343 immediately following that quotation there appears a quotation from Archibald MacLeish in the 'Atlantic Monthly' of August 1949 to the effect that revolution—and I am now paraphrasing, which was once spoken of with pride by every American, is now—well, I will quote—'become a word spoken with timidity and doubt and even loathing,' omission, 'The true test of freedom is in its use. It has no other test.'. Was that statement, coupled with the printing immediately above, intended to indicate an advocacy that revolution is the system or the answer to the change in the 'crazy economic system'? Mr. Sweezy: No. That was just a little filler. We find a little space needs filling up. If you'd like to spend the time, I will give you my thoughts on over-throwing government. Let me just say that con-

cisely I find the tenth article of the New Hampshire Bill of Rights an admirable statement of my own position."

Mr. Phinney: I think in fairness the rest of it should be read.

Mr. Wyman: Well, the rest of it is before the Court.

Mr. Phinney: The rest of it is not before the Court in the sense you are continuing to take excerpts out of context, as you have consistently in these proceedings. Read it.

Mr. Wyman: These excerpts speak for themselves, your Honor.

Mr. Millimet: Excuse me, your Honor. I'd like to object to my brother's reading of the transcript at this point. If I understood him correctly, I was following this book from which he was apparently reading of the Sweezy transcript, and I think he read something about revolution, and then at the end he read something about the truest test of freedom is its use; and in between is a long statement about freedom which he didn't read, and I do think it's prejudicial or improper.

The Court: You may make it part of your reply, if you so desire.

[fol. 172] Mr. Millimet: Well, all right.

Mr. Wyman: The only thing I want to make clear is that in its use it refers not to freedom but to revolution.

Mr. Millimet: Well, I will answer it when the time comes.

Mr. Wyman: Mr. Phinney, now in connection with this, is there any further beyond what I have read that you would like me to read at this time? I will be glad to read anything that you wish.

Mr. Phinney: That is fine. With the Court's permission, of course, I wish you'd read your next question and Mr. Sweezy's next answer.

Mr. Wyman: Yes, sir. This is exactly out of the transcript itself. "Mr. Wyman: And concisely do you maintain that the conditions spoken of or set forth in the tenth article of the Bill of Rights have become so oppressive and intolerable in this Country as to warrant the existence of the right of revolution at this time? Mr. Sweezy: I don't think the right is sometimes existing and sometimes not

existing. I think if it exists, it always exists. But I do not think the conditions at the present time are such that the right of revolution should be exercised. In fact I think it would be illegitimately exercised at the present time. As long as the constitutional methods of political action are open, I believe in their maximum utilization; but I can easily imagine a time when that wouldn't be so. If I had been a German under Hitler, I would have—very inefficiently, I am sure—but I would have been in favor of overthrowing him."

Now, your Honor, I refer your Honor, without reading it, without referring to it any further than to an examination of the record, to the language again in the first memorandum which is on file with the Court by Mr. Sweezy. And in this last document——

The Court: I don't think you mean that. You mean the first transcript?

Mr. Wyman: I mean the first memorandum.

The Court: There has been only one memorandum filed by Mr. Sweezy.

Mr. Wyman: In the Daggett case, the first memorandum.

The Court: There has been only one memorandum filed. Oh, you mean your own memorandum?

Mr. Wyman: Yes, sir.

The Court: I see. All right. Go on, please.

Mr. Phinney: You said "Sweezy." You meant in the Daggett case?

Mr. Wyman: In the Daggett matter. But it refers to some writings of Mr. Sweezy.

The Court: All right.

Mr. Millimet: Excuse me. Let's keep the record straight. It isn't the first memorandum that refers to the [fol. 173] writings of Mr. Sweezy. That is only a long quotation from the Lawson case. It must be the second. Yes, it's the second.

Mr. Wyman: Memorandum No. 2 in the Daggett case, your Honor. Memorandum No. 2 in the Daggett case.

The Court: All right.

Mr. Wyman: And I ask your Honor again, as a part of the spider web, a part of the threads, of the pieces of the jig saw puzzle, to look through Exhibit B offered by Wit-

ness Sweezy, and which my brother has before him, for all of the instances of class hatred and the references to the actual existing class struggle which is supposedly going on in America at the present time.

Now, I make no change from my argument to the Supreme Court that I am not a roving commission to investigate into thoughts and beliefs. I made that argument orally. The Lawson case was cited to the Supreme Court, and appears in the brief. It is not a roving commission to inquire into belief, Communism, or belief in something else which is so unavoidably associated with or inextricably tied up with Communism as to amount very close to the same thing.

Mr. Millimet: Your Honor——

Mr. Wyman: I think I am entitled to argue, your Honor.

Mr. Millimet: I just want to hear it, Louis. I didn't hear it. Could I have it read back? Do you mind? Would you read it back? (Last paragraph read back.)

Mr. Wyman: The Lawson case constitutes a re-affirmation of an express holding as to which the court felt that some doubt was urged to it concerning an interpretation of the Barsky decision which my brother has referred to repeatedly.

Mr. Millimet: That is a different case, your Honor. So my brother will be straight in his own mind, that is not the same case. Barsky has been in 3 or 4 cases.

Mr. Wyman: That is right. That is right. And it holds clearly that questions as to belief in Communism are proper, that they are entirely permissible, and it explains the reason why, if a person believed in Communism, there would be a series of at least mental blocks which would affect his action in such a manner as to warrant questioning by the state engaged in a security investigation.

Now, there is another matter which has been raised. I hate to take this time, but these issues are so important. It has been raised by Mr. Millimet. He says that before a question is asked, an investigating agency should be required to make a prima facie showing of relevancy. I don't suppose that that is possible nor sound, nor is it consistent with the investigative process. If that were to be the law, it would stultify all investigations, because investigations

seek to find out what the facts are, and many times an [fol. 174] investigator knows nothing before he starts.

The history of the 1950 commission in New Hampshire that did not have the subpoena power is a perfect illustration of an abortive investigation which can not compel witnesses to answer under oath. Their report indicates that. The purpose of the investigation here is simply to ascertain whether there has been peddling of subversion, whether it's Communist or Marxist, and what that means is a part of the proper questioning and answer of any witness. The peddling of that kind of doctrine under the claim of freedom of speech, the peddling of Communist doctrine, at least in New Hampshire, is not within freedom of speech. That is the law in New Hampshire. The Nelson case says that clearly.

I don't believe that it should be required that I should disclose here the names of informants. I think they have got to remain anonymous unless your Honor directs me to disclose them. These people wish to remain anonymous. Many times they are people who once were in New Hampshire active in the Communist Party, and they have testified freely and voluntarily to us. We have tried to assure them that any reference to their names would be of the least possible public attention, except that of course the report to the legislature eventually is unavoidable. I offer, however, to refer to names here if names, before an ultimate disposition of this matter, become necessary in the opinion of your Honor; and before releasing these witnesses from their obligation to answer these questions, I will produce the names in open court if your Honor directs it. But I want it clear that your Honor does direct it, if you feel that is necessary to a showing of relevancy.

Mr. Millimet has made reference to Senator McCarthy as an authority on Marxism and Marxism-Leninism. I'd like you to know I don't take Senator McCarthy as an authority on almost anything, but I will say this, that the American Bar Association's brief, which is in the hands of almost every one of us members of the bar, on Communism, Marxism, and Leninism contains enough material to indicate that the line between Marxism and Communism is so close in respect to this violent overthrow of the capi-

talist form of government, so close that it certainly warrants questioning in detail of any lecture from anybody who says, "I consider myself a Marxist, yes." And the references here, I won't take the time to read them all. I have them underlined, if your Honor wishes to have them; I will be glad to submit a copy of this brief of the American Bar Association. But I will read just one sentence at page 26. What is Marxism? "Lenin defines it: A Marxist is one who extends the acceptance of class struggle to the acceptance of the dictatorship of the proletariat."

[fol. 175] There is a long record here of all the tenuous things that add up to the "ultimate political aim of Marxists to overcome the whole state and therefore democracy as well." This is not my language; it is the language of the American Bar Association. And I think that it is very clear it's not proper for these respondents to come in here in this court yesterday and to claim they have answered these questions by the allegations contained in their formal pleadings.

Either we are entitled to these answers as a part of the legislative investigation or we are not. If we are entitled to them, then the principle of the decision in this matter is of extreme importance in so far as it involves and affects the questioning of other witnesses later on.

And I would say here, I would call your attention to Mr. Sweezy's own testimony in the first transcript again in respect to the lecture. Question, page 38.

Mr. Phinney: First transcript?

Mr. Wyman: First transcript.

Mr. Phinney: The lecture hadn't taken place at that particular time.

Mr. Wyman: Again in respect to the lecture. I think you are asking me a question?

Mr. Phinney: I say, I thought you might be referring to the second transcript, which took place after the lecture, not the first.

Mr. Wyman: No. I see what Brother Phinney means. I am referring to this transcript apropos of Brother Phinney's own remarks with respect to Socialism, and I think it will be very clear when I read these two questions and answers.

The Court: All right.

Mr. Wyman: Page 38. "Mr. Wyman: Well, isn't the type of Socialism that you advocate the type that would be in existence in a country after taken over by Communists? Mr. Sweezy: By the way, I want to bring to your mind your questions about my ideas." And then there appears a colloquy which I will read if my brother thinks it important.

Mr. Phinney: I think it would be fine if you read it all.

Mr. Wyman: All right.

The Court: Well, let the Court interrupt here just a moment. I take it you have a substantial distance more to go.

Mr. Wyman: Very short. I don't think I have more than ten minutes, maybe fifteen at the most.

The Court: All right. You desire to make a reply?

Mr. Millimet: Yes, your Honor, because I feel this is new matter.

Mr. Wyman: It's all in the record, your Honor.

[fol. 176] The Court: All right. Then you desire to make a reply, Brother Phinney?

Mr. Phinney: No, your Honor. I will reserve my rights and confine myself to the Sweezy case.

The Court: Well, I think it's pretty obvious——

Mr. Millimet: I certainly have no objection to allowing my brother to finish if the Court hasn't.

The Court: I don't know. I was wondering whether to take a recess now because Miss Forsberg has been going pretty steadily here. I think we will adjourn now till two o'clock, since it's obvious that we would not finish with both you and Brother Millimet. I take it that, Brother Millimet, you would be rather reasonably brief this afternoon.

Mr. Millimet: Oh, yes.

Mr. Wyman: I will say nothing further after this.

Mr. Millimet: I am only going to refer to the matters that my brother has raised here.

The Court: All right.

(Copy of letter of January 4, 1954, from the Attorney General to President Chandler received and marked State's Exhibit D for identification; and letter of March 30, 1954, from John T. Holden to the Attorney General received and marked State's Exhibit E for identification.)

(Noon recess.)

Mr. Wyman: This should be marked at Mr. Millimet's request for identification.

(Copy of letter of January 4, 1954, from the Attorney General to Professor Daggett received and marked State's Exhibit F for identification.)

Mr. Wyman: May it please the Court, I will resume again as briefly as I can.

The Court: I think I interrupted you in the middle of a quotation.

Mr. Wyman: Yes, your Honor. I was in the midst of page 38 of the first Sweezy transcript involving some questioning which I think is explanatory of this question of calling a dog a cat, or whether or not it exists or existed. This hearing took place on January 8, 1954. The lecture which is in question in the immediate proceeding occurred in March of 1954, but I think that from these questions and answers it will be readily apparent that what is asked here is relevant in connection with the subject matter of the lecture.

"Mr. Wyman: I am questioning in an endeavor to understand what you mean by Socialism as you have translated it in writing and distributed it in this Country." I am reading these now at the request of Mr. Phinney. There are [fol. 177] only three interstitial questions here. "Mr. Sweezy: I am calling attention to the record that you are questioning me about my ideas; and in order to clarify certain points on which there is much public misunderstanding, I want to answer. But I want to call your attention to that fact. Mr. Wyman: Read the question. (Question read.) Mr. Sweezy: I think that the Communist countries have an economic system of Socialism, which does not mean, however, that I advocate the use of the methods of the Communist countries in this Country, not at all. Most of them are countries which didn't have the Democratic traditions and procedures we are fortunate enough to have. I think it is possible to effect changes in this Country in a way that is very different from the way it was done in Russia and China, for example. Mr. Wyman: In other

words, without force and violence? Mr. Sweezy: Yes, without force and violence. If I were in Britain today, I would be a member of the British Labor Party and would be working for a constitutional triumph of Socialism; and if there were a labor party in this Country comparable to the Labor Party in Britain, I'd be a member of it."

Now, here is the question and the answer that I particularly wish to call your Honor's attention to at this point. "Mr. Wyman: Isn't it true, Mr. Sweezy, that the Socialism you have been advocating exists only in Communist countries today? Mr. Sweezy: Yes, that is true. Britain hasn't actually succeeded yet in establishing a Socialist system."

Now, I don't think that it's proper here to be deceived about this business of Socialism. Mr. Sweezy's Socialism is a horse of a very different character than the ordinary concept of Socialism as it has been exchanged in the market place of ideas in America and particularly as it has been typified by the candidacy of Norman Thomas, for example, as a Socialist candidate for president of the United States. It's a very different thing.

And that brings up this point which again perhaps is a matter of personal privilege but nevertheless is relevant since Brother Millimet raised it. He said that he, Mr. Conner, questioned a witness. I won't mention his name again unless your Honor directs me to. Mr. Millimet has examined this transcript. That he asked him about his religious faith. That transcript has been examined, and he was not asked about his religious faith or his religious beliefs. But I do find that in that transcript, inasmuch as he mentioned it, there are three questions and three answers which are quite relevant here.

Question, page 7. "Do you know of any Communists in the state at all? Answer. I don't know of them as Communists. Last year I did make a comment that I heard a man lecture on Socialism and didn't make any distinction between Communism and Socialism, but I know so little [fol. 178] about Communism so I couldn't tell. Question. That was Paul Sweezy? Answer. Yes. He was a guest lecturer."

Mr. Millimet: Excuse me. I assume the Attorney General is now deviating from the standard which he has set

himself here, namely not offering any evidence to show the relevancy of these questions. If he wants to offer evidence, of course I have been asking him to do it for two days, but if this is offered for that purpose I'd like to know it.

Mr. Wyman: This is certainly offered as being relevant on the question of the content of Mr. Sweezy's lecture at the University of New Hampshire. This is positive evidence. This is a matter which was referred to first by Mr. Millimet, who accused Mr. Conner of going into and far afield from proper limitations on a subversive investigation. And here is testimony which I offer ties directly in to what Mr. Sweezy said in this class to students at the University of New Hampshire.

The Court: Well, of course, What Mr. Millimet says is correct. This is a different stand than your prior stand with reference to the issue of relevancy; is it not?

Mr. Wyman: I don't know, your Honor, whether it's a different stand. He has attacked the good faith of the questioning. He definitely has attacked the propriety of the questioning. It seems now after examining the transcript—I wasn't present when this transcript was taken—that what he said with respect to it is not true.

The Court: Well, in so far as you're answering Brother Millimet's argument with reference to the questioning with reference to religious beliefs, your use of the transcript is, of course, correct in answer to that. Now, beyond that, I don't say that you are using it improperly. What I am merely saying is that what Brother Millimet has just stated is correct, that to use it as an offer of proof to show relevancy as distinguished from your own personal reasons for examining with reference to this lecture is a change in position in the sense that you are now proposing to offer evidence from this transcript as proof of the relevancy as such of the lecture. Is that correct?

Mr. Wyman: Well——

The Court: I am not ruling that you may not do that, and I do not understand that Mr. Millimet is objecting that you may do so.

Mr. Millimet: On the contrary, I have asked him.

Mr. Wyman: I don't know if I am changing my position.

Let me say I am offering this transcript of May 5, 1954, as a further indication concerning the propriety of questioning, Mr. Sweezy and Mr. Daggett, but particularly in the principal case of Mr. Daggett with respect to the actual content of the lecture by Mr. Sweezy on Monday March 22. This is testimony here from a student who attended the [fol. 179] lecture. I think it is competent and proper to show that we, in the state staff, had reasonable ground to believe that questioning was at least pertinent, if nothing more.

Mr. Millimet: Well, if I may borrow a phrase from the Attorney General, I can't tell whether he has got a dog or a cat there. If he is offering this to show what was in the lecture, that makes all the difference in the world to the manner in which I wish to proceed, because I have ample evidence in the form of affidavits. At my request Mr. Phinney has produced the lecture, mimeographed notes as I understand it or written notes, and I am prepared to prove what was in the lecture by the best evidence available. If my brother is offering evidence, then I am going to offer evidence. If he offers it for that purpose in any way, as a foundation for the Court's finding that these questions were relevant for the purpose of determining whether or not Professor Daggett is in contempt of court, then I would like to know it, and that is all. I don't object.

The Court: Well, my understanding of the Attorney General's position is that it has not changed from his own statement, although I think that what he is offering now would be more in support of the position that you are under the impression he is taking, Brother Millimet. However, I am going to rule that I am only going to receive it upon the issue that he has previously stated he is offering it for, and will not consider it as evidence on the question of relevancy as such, on which no evidence has been offered, and as I understand it, the Attorney General does not propose to offer any.

Mr. Millimet: That certainly makes the legal issue plain. And, also, I call the Court's attention to the fact it's subsequent to the time of questioning, when the questioning of the Professor began.

The Court: Is that correct?

Mr. Millimet: Several months, I believe.

Mr. Wyman: Why, your Honor, it's not correct. The second Daggett transcript with Mr. Conner was May 18, 1954. The testimony from which I am reading is May 5, 1954.

The Court: All right.

Mr. Millimet: I meant it was subsequent to the time the questioning of Professor Daggett began, which was in December 1953.

The Court: I see. All right. I don't mean to shut you off, Mr. Phinney.

Mr. Phinney: Very briefly, your Honor, I'd like to state the Sweezy position with regard to something entirely collateral. I'd like the record to show that the right of the Attorney General to question Mr. Sweezy under his mandate from the legislature has not been raised by me as such now or at any point in the proceedings. I don't question the fact that he had the right to ask Mr. Sweezy about the [fol. 180] lecture, and ask him whether or not, in the conduct of his investigation, it contained subversive statements, however you want to put it. That question was asked, and that answer was given.

Now, to come to grips with the legal situation with which Mr. Sweezy is going to be confronted very shortly, if he has not yet since the Daggett case still goes on, the state of the evidence is that nothing in the lecture advocated the overthrow of constitutional government by force and violence. That is Mr. Sweezy's statement under oath.

He is now, or will be shortly, before the Court in a criminal contempt proceeding; and to determine whether, in view of the state of the evidence, he should be required to answer, is going to require, in my opinion, the additional offer of evidence on the part of the Attorney General that in fact this lecture did so advocate.

The Court: As I understand it, your position is different from that of Mr. Millimet?

Mr. Phinney: I don't know that it is.

The Court: Well, Mr. Millimet, as I understand it, takes the position that questions about the lecture are not relevant, if I understood the transcript.

Mr. Millimet: I guess I am glad the Court raised that. In my answer I clarified the position somewhat.

The Court: I see.

Mr. Millimet: I didn't know just how far you could go without waiving your right to raise these questions. Therefore, I cut it off, what I now realize is too early.

The Court: I see. All right.

Mr. Millimet: We will waive the question about whether or not Mr. Sweezy lectured.

The Court: I take it at this point there is not too much doubt but what he did give a lecture.

Mr. Millimet: I have offered evidence on that. We are not contesting his right to ask that question.

The Court: You may continue.

Mr. Wyman: Your Honor, I don't think it's right, or proper, or fitting——

The Court: If you are going to object to his use of the phrase "criminal contempt," I recognize the distinction you make.

Mr. Wyman: I was going to mention I don't think this is criminal contempt at all; but I don't think it's right for counsel to get up and state what the answer is or not. I think we are entitled to the answer or we are not.

The Court: I understand your position.

Mr. Wyman: Secondly, I don't conceive it to be right, and [fol. 181] I think the authorities establish that it isn't right, that we are under any obligation to make any showing before your Honor other than that there was reasonable ground to believe that the remarks made by Mr. Sweezy might have been subversive. I think that is all that we are under any obligation to show, and I think the record is more than replete with that reasonable ground.

But I would like to proceed just with these last two questions and answers. "Question. Daggett's Humanities? Answer. Yes. He was over there this year, but I didn't have the course this year. Question. What was Sweezy's thesis? Answer. The only thing I can remember—I disagree with—was he said that Socialism was coming and there was no way we could stop it and we might as well accept it now. That is the one thing that got me. In the course of it I think he told us ways in which it would be helpful, better."

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[fol. 182] Mr. Wyman: Now, your Honor, I'd like to pray the Court's ruling, or not the ruling but I'd like to request at this time that His Excellency take judicial notice that the concept of dialectical materialism is part and parcel of the Communist-Marxist doctrine.

The Court: Well, so far as I am being referred to as Excellency, I deny the appellation.

Mr. Wyman: I am sorry.

The Court: In so far as you assume that I know what dialectical materialism is, I again must say I don't. If you want to qualify as an expert or give me a dictionary, or a book of philosophy or something on it, why, if it's necessary I will become an expert myself on it. I couldn't say that I could take judicial notice of something I really don't know.

Mr. Wyman: I then offer, your Honor, as exhibits, not for identification but as exhibits in this matter, the brief of the American Bar Association on Communism, Marxism, Leninism, and the History of the Communist Party of the Soviet Union Bolshevik, which is generally acknowledged to be the basic manual of Communism at the present time and was so acknowledged in the lecture by Professor Adams at Dartmouth College last Friday night, to which Brother Millimet referred.

Mr. Millimet: I am glad to see the book, your Honor. May I see the other book? Well, I certainly don't think I am in any position, after the legal position I have taken, to object to this evidence, but I do object to it being offered out of context.

The Court: Well, may I just interrupt a moment? Do I understand you to say that dialectical materialism is the entire Communist philosophy, or is one tenet of Communist philosophy?

Mr. Wyman: One tenet, your Honor; one part.

Mr. Millimet: We have here in the courtroom a man who is acknowledged to be the outstanding exponent in the United States of Marxism, and I should think if there is going to be any question about it, we probably could examine him on the subject.

Mr. Wyman: I think Mr. Millimet is at liberty to call him.

Mr. Millimet: I may wish to. That is the point I am raising. If this is going to go in, I would feel impelled to at least consult an expert on this subject as to just what position Marxism—dialectical materialism—occupies in this over-all thing. I think this is fine. I am in favor of it, your Honor, because I think the Attorney General is giving some indication at last of what we have tried to say here from the beginning, that there is a line somewhere between what is legal and what is illegal. Now, we have [fol. 183] tried to urge that the line should be drawn beyond Marxism. My brother urges, apparently, that it should be drawn before Marxism; that is to say, Marxism crosses over into illegality in his mind. Now, I call the Court's attention to the fact that the title of this book is not what my brother says it is; it's not a brief on Communism, Marxism and Leninism. It's a brief on Communism: Marxism-Leninism. That is the point we have been trying to make in these proceedings from the very beginning, and I certainly don't object to it; but I certainly feel free to put Mr. Sweezy on the stand and have him explain to the Court, because I consider it absolutely essential to the determination of the issues in this case now that the Attorney General in my opinion is facing up to it.

Mr. Wyman: If Mr. Sweezy takes the witness stand here, your Honor, I am only here because he declined to go further with me, and so I filed a petition asking if he would go further under court order. If he goes further here indirectly as a witness in the Daggett matter, I'd like to have a ruling before he does.

The Court: Well, there is nothing pending for the Court to make a ruling on at present. You have offered two pamphlets. The defendant's counsel agrees that they may be used as an exhibit. I take it that, Mr. Phinney, you have no objection. Have you seen them?

Mr. Phinney: No, I haven't seen them. I guess in a sense I am a party in these proceedings. I don't know that this is the appropriate time to seize upon to point out the inherent fallacies in the Attorney General's approach to this matter. I want to do that at the appropriate time. In order that my legal position may be correct, I want to ob-

ject with the understanding that the Court will let the exhibits, whatever they may be, be marked, and I may have an exception. I don't want to pretend to the Court that in the period of time that would necessarily be available that I can undertake to comprehend the philosophies and various other matters necessarily inherent in dialectical materialism.

The Court: Well, the Court is frankly a little bit uncertain at the introduction of something which sounds a little bit difficult to learn about for the Court at this late point in the hearing, or what the Court had thought was the late point in the hearing. Obviously, these two pamphlets that are being offered are being offered with the expectation the Court is going to read them, and how the Court can read them in a very short space of time and give a decision today, as the Court had expected to, and shortly after counsel completed their argument, becomes a little difficult to see.

Mr. Wyman: May I explain?

[fol. 184] The Court: All right.

Mr. Wyman: Yesterday in my opening argument I referred to dialectical materialism and to excerpts from the American Bar Association's brief on the subject of dialectical materialism, Marxism, and Marxism-Leninism. While the caption referred to by my brother has a hyphen between Marxism and Leninism, the actual content of the brief is self-explanatory and treats in a very different way the three concepts involved. Dialectical materialism, your Honor, I have referred to in the sense of offering these documents now merely for the purpose of the record and in having them in this matter, because the only other aspect of this lecture which has not been supported, at least prima facie, with a showing of ground to believe that it's part and parcel of subversive doctrine, atheism if you will, is dialectical materialism.

The Court: Just a moment. Do I understand you to say that atheism is subversive?

Mr. Wyman: No, sir; I do not; not per se. But atheism is a part of the picture here, and it certainly is relevant in so far as atheism is consistent with and is included in the doctrine of scientific materialist explanation of the universe.

Mr. Millimet: This is a little bit beyond me, if I may say so, but I'd like to say something on this, if I may.

The Court: Come up to the bench just a moment. Seems to me we are getting far afield.

Mr. Wyman: Do I understand, your Honor, these may be marked then?

The Court: They may be marked, yes, with the understanding I am not going to read them presently. I may read them some time. I am not going to read them as part of this case right now.

Mr. Millimet: I guess I will object to it then, your Honor. I wouldn't object to them if you read them.

The Court: Do I understand I am to read the whole pamphlet? That second pamphlet looks awfully thick.

Mr. Millimet: I don't know what is in it.

Mr. Wyman: I intend to refer to portions of them after having them marked here and now.

The Court: Let them be marked. And it's understood I only have to refer to the portions that counsel may desire me to read or refer to. Is that correct?*

Mr. Wyman: Certainly.

Mr. Millimet: I object to it being used in that fashion, [fol. 185] your Honor. I am sorry.

The Court: Let me see what they are. I don't blame you.

Mr. Millimet: I certainly don't want to spend a week here.

Excuse me, your Honor, have you got the petition? Maybe we can solve the problem.

The Court: It's not in the Daggett: I don't think there is a question in the Daggett petition. I think there is one in the Sweezy petition.

Mr. Phinney: There is in the Sweezy petition.

The Court: If I understand correctly, he is not offering it as a question to be asked Professor Daggett. I think the reason for the confusion, General, is that there is such a question included in the Sweezy petition or in the Sweezy transcript, one or the other.

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* (A. B. A. Brief marked Ex. No. 11.) (History of the C. P. of the S. U. marked Exhibit No. 11-a.)

Mr. Phinney: It's in the petition and in the transcript as far as Sweezy is concerned.

The Court: If I understand correctly, he is just offering it on the question of relevancy of the lecture.

Mr. Wyman: That is correct. In order to determine whether the Sweezy statements, either in the lecture or in response to questions, be seen in their true light, vis-a-vis Communist Party doctrine, it's necessary to take the dictionary and have available definitions of what these fancy phrases mean: and that is the only reason I offer them. Your Honor said he didn't have before him such sources. I offered them simply for your Honor's consideration in determining, both from the considered opinion of the American Bar Association and from the handbook of the Communist Party, just what dialectical materialism is.

The Court: Well, you understand that this is in reference, if I understand the General correctly, to the reference which I gave at or shortly prior to this that two reports to him described this lecture as being one of dialectical materialism, or something like that. It that correct?

Mr. Wyman: That is right. Professor Holden has said in the letter which is on file in this matter that this was a glossed-over version of dialectical materialism. If that is so, it certainly is pertinent to this inquiry.

The Court: I understand the limitation now that he has placed upon what he is offering this for, and it does not relate to any question which was asked of Professor Daggett.

Mr. Millimet: It's hard for me to keep that in mind because it's a very subtle distinction, your Honor, but I'd like to state it, if you don't mind.

The Court: All right.

Mr. Millimet: He offers this to show the reason why he went into this thing with the Professor, is that right; not as ground here as to why he may ask the Court to punish [fol. 186] for contempt, but just to show why he ever started on the whole thing at all?

The Court: No. I don't understand that that is his position. Perhaps you'd better state it again.

Mr. Wyman: This is offered to show that there are reasonable grounds for any investigator to believe that what

this man taught in Mr. Daggett's Humanities course to Mr. Daggett's students was pro-Communist and pro-Marxian line in disguise, and I think it's legitimate for that purpose.

The Court: Do you understand his position now?

Mr. Millimet: No.

Mr. Phinney: If I understand his position as it is stated, your Honor, I certainly object to it without testimony being offered here in court in connection with these proceedings.

Mr. Millimet: If I understand it the way I think Mr. Phinney does, I do, too, your Honor.

Mr. Wyman: The witness is here. Let him answer the question. He was present at the lecture.

Mr. Millimet: I don't understand what he is saying. What witness?

Mr. Wyman: Mr. Daggett is here. Let him answer the question about what went on at the lecture. Isn't that a competent and proper line of questioning, your Honor?

The Court: This is a continuation of an explanation of his position?

Mr. Wyman: Yes, sir.

The Court: That is the reason he should be able to inquire into this lecture, is because the lecture has been described as including dialectical materialism which, as he says, is a tenent of the Communist Party?

Mr. Wyman: Not only that; there are two previous lectures, your Honor, some of which were booked as having to do, I think, in the syllabus which has been furnished your Honor with at least certain aspects of Communism, whether objective or not.

The Court: Let's stick to the point we are arguing on now, which is dialectical materialism. What I am getting at, can't counsel agree on a definition of dialectical materialism? Then we can go ahead, and I won't have to read the whole history of the Russian revolution which has been offered me.

Mr. Phinney: If the Court please, I can state my position very simply. I can't agree on what dialectical materialism is because I don't know. But I will state this, that whatever it may be, whether it's a tenet or not a tenet

of the Communist faith, can't under any circumstances be relevant to what we are here for.

[fol. 187] The Court: I understand your position.

Mr. Millimet: That is my position, too; my position, as I said in the memorandum and as I have said all along. He has got to relate it to the particular tenet of the Communist faith which relates to the overthrow of the government by force and violence.

The Court: I understand your position, but let me state my position for a minute, and that is: Do you have any objection to the Attorney General reading the definition and withdrawing those two books from evidence if they are being admitted solely on the basis that I have to read them both before I give a decision in this case? If you will let him give his definition of dialectical materialism, if you, after consulting with your experts, desire to give a different definition, the Court has no objection to your stating such a definition at any time. What do you say, General, are you willing to just rest upon reading the definition you have there and withdrawing those two books from evidence?

Mr. Wyman: I only offered them for the help of the Court.

The Court: I understand you offered them for that purpose. What do you say to that?

Mr. Millimet: Well, other than the fact, as I say, it has nothing to do with it.

The Court: I understand your position.

Mr. Millimet: I have no objections, I guess, as a practical way of proceeding except that it's kind of difficult for an attorney to agree to a method of procedure which he thinks is all wrong from the beginning; that is all.

The Court: I am not asking you to agree or requiring you to agree to anything.

Mr. Millimet: I know you are not, your Honor. For the sake of some day bringing an end to these proceedings, I will agree to it reluctantly, but I will.

Mr. Phinney: I don't have any objection to Mr. Wyman making any reference he wants to by way of argument to anything. There have been so many extrajudicial statements in this proceeding, I don't think one more will make any difference.

Mr. Millimet: I'd just like to call attention to the date of this letter in which the Sweezy talk was referred to as a glossed-over interpretation of materialistic dialectic. It's March 30, 1954.

The Court: You may proceed, General.

Mr. Wyman: Your Honor, at page 105 of this History of the Communist Party of the Soviet Union there appears the following which may or may not be helpful in part in connection with dialectical materialism. It is part of a very substantial section having to do with the whole subject, but the first paragraph reads, "Dialectical materialism is the world outlook of the Marxist-Leninist party. It [fol. 188] is called dialectical materialism because its approach to the phenomena of nature, its method of studying and apprehending them, is dialectical, while its interpretation of the phenomena of nature, its conception of these phenomena, its theory, is materialistic."

In the American Bar Association's brief on the subject of dialectical materialism there appears the following at page 21.

"The Short History devotes pages 105 to 131, inclusiv ," that is referring to this book, "in explanation of 'Dialectical and Historical Materialism' and uses words only to make other words more confusing.

"However, being material, if not scientific, we proceed:

"In life and time there is neither God nor Truth.

"Facts are what you make them; if they qualify 'in the Market Place' that is the truth for today. Tomorrow it may be a different market place and an entirely different truth.

"Two and two do not make four if the leader determines the answer is three or five.

"Being materialists the truth is what those in Power say it is.

"In History, facts, dates, individuals, groups, ideas and reasons are changed to fit the present occasion; and in the next publication realigned to meet the then present occasion.

"Obtain Orwell's '1984' from your library or book seller. Read it and compare it with the stated plans that Marx, Lenin and Stalin have for u." * * *

"Adolph Hitler in 'Mein Kampf' told the world precisely what he was going to do. Nobody believed him until he did exactly what he said he was going to do. Marx, Engels, Lenin and Stalin are just as frank." That is the American Bar Association through its committee and through the approval of the association.

Now I have only one more subject, and that is Mr. Phinney, in his remarks yesterday——

Mr. Millimet: Excuse me.

The Court: You may go ahead in your answer.

Mr. Millimet: I object to the use of that statement, your Honor. I thought he was going to read a definition. Instead of that, he has now put into the record somebody's opinion about something. I was trying to follow it, but I don't think it was a definition of dialectical materialism, and I ask that it be stricken.

Mr. Wyman: Oh, your Honor, it's not just somebody's opinion. I offer the whole brief here, which shows the answers to help your Honor in understanding.

The Court: Can't somebody get me an ordinary dictionary that has a definition of this word, or doesn't the [fol. 189] dictionary define it? It may stand subject to your exception.

Mr. Phinney: So far as it has any bearing on the Sweezy case, subject to my exception.

The Court: All right. It may stand subject to both your exceptions.

Mr. Wyman: Yesterday Mr. Phinney said, and I quote Mr. Phinney, in respect to this Progressive Party, and it's the only line of questioning which I don't believe has yet been covered. "Now, having that in mind, it's interesting to attempt to figure out—it's interesting, but I submit impossible to attempt to figure out—how the inquiry sought to be made into the composition and make-up of the Progressive Party under any circumstances can be relevant. Having that background in mind, let's just take it a step farther. It can only mean that, and I take it since he hasn't, or is unwilling to, or unable to produce and state with valid evidence that any given individual is a Communist, it can only mean that the Attorney General wants to ask this or any other person who may have been affili-

ated with the Progerssive, the Republican, the Democratic, the Farm-Labor, or any other party legally organized."

I have here photostatic copies on the letterhead of the Progressive Party of a slate of candidates for the Progressive Party. I would prefer not to have these marked as public exhibits, but I am willing to if your Honor insists that this be done in order to establish relevancy. I am willing to state that on this letterhead, which includes the name of the wife of Mr. Sweezy, that there appear 5 individuals which we are prepared to testify, and to make a statement, and offer to this Court, we have sworn testimony, are or were members of the Communist Party.

Secondly, in the slate of candidates for the Party offices there are also a number of individuals whom we make the same offer concerning. And I would say only one other thing. I have the name here of another, whose sworn testimony we have taken, who was a candidate on the Progressive Party ticket in 1948.

Further, I would be very glad, if the Court feels that further inquiry into whether or not the Progressive Party ever reached the point of being subversive, and I have no reason to know whether it did or didn't, but all I can say is how is the legislature to know unless it can ask these questions, to offer further evidence that a number of people in the executive committee of the Progressive Party in 1948, 1949 and 1950 were active Communists or former Communists, including the executive director.

Now, I think that a witness should identify, should be required, and it's relevant and pertinent to require a witness to identify individuals, either by name or as active in [fol. 190] the Progressive Party, and whether or not they occupied a policy position in the party. I don't know how we can find out, first, who the executive officers were, or whether they were members of the Communist Party without first identifying, without first having the right to ask whether or not they were active in the Progressive Party. I think it's an entirely proper question. It's not beyond the pale of possibility that the legislature next year might wish to legislate with respect to the Progressive Party, and it certainly is a legitimate question for a legislative committee or a delegated legislative committee. It may

not be subversive as a party, certainly, but how is the legislature to know unless it can question?

Mr. Millimet: Excuse me just a moment. I am going to object to the offer unless I misinterpret it, your Honor. I am just trying to keep the issue plain. Is this an offer of proof or isn't it? If it's an offer of proof, then we have got a different case than what we came in here with.

Mr. Wyman: I don't have to make an offer of proof. I have said repeatedly if the Court instructs the Attorney General that it's necessary as a part of questioning the witness to first make an offer of proof, I will do so.

Mr. Phinney: I say the witness is not yet in contempt.

Mr. Millimet: Well, of course, the witness is not in contempt, your Honor, but the point is, this is the argument about whether he is going to be in contempt or not. Now my brother makes statements of evidence. He has just stated about six important items of evidence. I object to my brother making statements of evidence unless he offers to prove the evidence, and if he offers to prove the evidence, then we haven't got the case we came in with, at least not the one we have been arguing up to date. That is a different case. I'd just like to know in my advice to my client. After all, that is the position I have taken as a matter of law from the beginning, that if he offers evidence about this subject, I may wish to advise my client to answer the questions.

Now, another thing I'd like to say, your Honor——

The Court: Well, Brother Millimet, may I state that the evidence which he has stated in an offer of proof, it does not appear, I think, in the transcript in the Sweezy case. It does, however, appear in the Daggett transcript. And that is the offer to show there were Communists in the Progressive Party. That is the limit to which it goes. I believe that that does appear in the Daggett transcript, if I recall it correctly.

Mr. Millimet: Then I misunderstand what he offers. I thought he offered to prove there was so and so, and so and so in the Progressive Party, that they were Communists, and we should be instructed to answer as to certain people. [fol. 191] Well, we offer to answer as to anybody he wants to ask us about.

The Court: That is why I say there is no difference in what he is offering to show now than what he offered to show at the time of the transcript in the Daggett case and his position has not changed in that respect.

Mr. Wyman: That is right, except Mr. Phinney made certain remarks.

The Court: Well, I do not think the offer or the statements that were made in the Daggett transcript were made in the case of Mr. Sweezy's transcripts.

Mr. Phinney: That is correct, your Honor.

The Court: So his argument was perfectly correct. But in so far as the argument is directed to the Daggett case, which is all that we are actually hearing, although Mr. Phinney is a party to this one by agreement because the same issues are involved, why, there is nothing new that is being offered, Brother Millimet.

Mr. Millimet: Well, there is this much that is being offered, your Honor. He is making a specific statement about things now, and that is not in the Daggett transcript. I am sure that what he just said is not in the Daggett transcript.

The Court: Well, it may be a little beyond, but in any event there was no statement in the Sweezy transcript there were known Communists in the Progressive Party. There is such a statement in the Daggett transcript, if my recollection is correct.

Mr. Millimet: Well, I have the Daggett transcript in my hand, and I think there is a distinction, perhaps, between your recollection and the precise.

The Court: All right, may I see the transcript?

Mr. Wyman: This was the Sweezy transcript.

Mr. Millimet: The statement in the transcript was page 55. "The Progressive Party is not under investigation itself, but we are investigating Communist infiltration into the Progressive Party as we are into any place in the State where we find it."

The Court: I am speaking of a section beyond that, Brother Millimet, where he has asked about specific people who are members of the Progressive Party, and they are identified one by one as being claimed Communists by the Attorney General.

Mr. Millimet: We answered the question.

The Court: That is correct. But as I say, it isn't any different than what he is stating now, that there are certain people in the Progressive Party, or were, that he claims are Communists, and that is what he stated at the time of the Daggett transcript or hearing.

Mr. Wyman: I have got to say something now in connection with what Mr. Phinney just said. This is at page [fols. 192-201] 57 of the Sweezy transcript. Question to Mr. Sweezy. "Was Charles Beebe active in the Progressive Party in New Hampshire?"

The Court: Just a moment. I know your position is different in the Sweezy case, but I don't want to get the two cases confused for a few minutes here, at least. I understand your position is different, and all I was doing was stating to Mr. Millimet I did not think that your position was different here than it had been in the Daggett transcript. When we come to the question in the Sweezy transcript, we will discuss the Sweezy transcript, because it doesn't seem to me it's particularly pertinent right at this time on the present issue.

Mr. Wyman: I have only one final remark. I don't know what my brother is going to say again now when he argues re-rebuttal or surrebuttal, but I do say that nothing in the investigation which I have conducted in New Hampshire in any way limits any freedom of objective inquiry directly or indirectly.

All the smoke screens that may be laid down about activities enjoining conformity are absolutely unsound so far as this investigation is concerned. I have never said you must not do this. I have never said you must conform. I have never characterized a witness in a hearing or a proceeding before me. In no demonstrable respect is there any restriction on freedom of discussion or objective presentation of facts of political organization to youth or to adults; but before we can know that what is involved is properly within the limitations of freedom of speech, and it does have its limitations, your Honor, it is not an absolute privilege even in America, we must have the answers to the questions which have been put and others that may logically and relevantly follow them in private session.

I respectfully request again that here your Honor direct the witness to answer the questions put to him. I have no way of knowing what the answers will be. But I think the State is entitled to the answers. I think they are relevant, and I think there has been a substantial case here to show that there are ample grounds for questioning concerning the subject matters referred to in the petition.

* * * * * * *

[fol. 202] The Court: This case has been well and ably argued by counsel for both sides. I think it deserved the full and complete arguments that it received, the full and complete presentation that it received. The issues presented here are important and not easy to determine, but actually it comes down to a rather narrow question, and that is the question of relevancy or irrelevancy of the particular issues involved to the particular questions asked.

I think the parties are entitled to findings of fact and rulings of law, so I shall give them now orally. If, in the course of giving them, I make an error, I will ask permission of counsel to correct myself because, as I say, I am giving them orally now and without complete notes.

Mr. Phinney: If the Court please, as I understand it, this is in connection with the Daggett case?

The Court: This is in connection with the Daggett case. However, my rulings of law, in so far as they might be applied to the Sweezy case, will be made also in the Sweezy case and may be construed by you to be applied by me to the Sweezy case when the Sweezy case is heard by me.

In so far as the requests of the defendant Daggett, I have considered the first three requests, and I am not making any ruling on them at the present time. That is based on a ruling of law which I am making that at the present stage of these proceedings it is not an action of criminal contempt.

Numbers 4, 5 and 6 are granted in so far as they relate to the evidence, but may be denied in part as far as the law is concerned, as will appear when I make my specific findings or rulings of law in the case.

Number 7 is granted.

In the three particular fields of inquiry which the Attorney General went into in his petition and which he went into in the actual transcript, as to the inquiries into the lecture at New Hampshire University, I rule as a matter of law they are relevant under the statute under which the Attorney General is acting. That ruling is based upon the sections in the statute which relate particularly to teaching or advocating Communism; and I rule as a matter of law that on the basis of that the Attorney General is entitled to inquire into the actual content of any lecture given at any school. That ruling, as are the other rulings in the case, is not based upon any evidence which has been presented. However, my findings of fact and rulings of law are based upon my consideration of the entire argument of counsel and the transcript in both the Daggett cases and [fol. 203] the Sweezy cases, which I have read together with the briefs and arguments of counsel.

The second group of inquiries which relate to the Progressive Party, I also rule as a matter of law are relevant to the inquiry, since under the statute the Attorney General is directed to inquire, as I conceive it, into any Communist infiltration into any political party or organization. And it would appear to me that the Attorney General might have information of particular Communists which the witness who is testifying would or did not know were Communists but might know they were members of the Progressive Party, which information might not be possessed by the Attorney General, and therefore the information he might obtain from such an inquiry would be helpful to him in his general investigation.

The third group of inquiries which related to opinion and beliefs, and answers to hypothetical questions, I rule are not relevant to this case and are too remote from the issue to be helpful to the Attorney General in his inquiry.

The rule of the Lawson case, it appears to me, permits an inquiry of a witness as to whether he is a member of the Communist Party, or a believer in Communism, or a believer in the violent overthrow of the American government. The concept of inquiring into a persons' opinions and beliefs is generally contrary to the American concept of life. I feel that it should not be gone into except where the legis-

lature has specifically authorized it. I feel, therefore, that in the particular cases that inquiry into opinions and beliefs, where they are not direct inquiries into a person's belief in Communism or the Communist Party, are too remote to the inquiry to be relevant to the case.

In so far as my rulings are contrary to the defendant, I am saving the defendant's exception. In so far as my rulings are contrary to the State's position, I am saving the State's exception. They are all rulings of law, and none of them are mixed rulings of law and fact, and none of them are based on any discretionary right which I might have to make such a ruling.

Mr. Wyman: I have no exceptions, your Honor.

The Court: I would prefer to save your exception since I think the point is one that both sides should have their exceptions saved.

Mr. Phinney: May I request a bench conference, your Honor?

The Court: Yes.

(Discussion off the record.)

(June 30, 1954)

Mr. Millimet: May it please the Court: May I have a [fol. 204] word, please, your Honor, at this stage?

The Court: All right.

Mr. Millimet: I know that the Court yesterday noted my exception to the rulings pertaining to relevancy, and I just want the record to be plain on the subject. Our exceptions, we trust, are grounded not only in the belief that the Court is in error concerning the manner in which the Court has interpreted the statute, that is, in determining the legislative intent, but is in error because as interpreted the 1951 statute and the 1953 resolution, we believe respectfully, are both unconstitutional under the rights of free speech guaranteed by the United States constitution in the first amendment and applied to the states under the fourteenth amendment, and expressly recognized in New Hampshire in the Supreme Court of New Hampshire decisions. I trust that it's plain those questions are raised.

The Court: All right. I will also note your exception, which I do not think I specifically did, to my refusal to

grant any of your requests for findings of fact and rulings of law which I did not grant.

Mr. Millimet: At this point I'd like to ask further indulgence of the Court on something that has just come to my attention which was not available to me until just this moment as I walked into the courtroom. Mr. Wyman offered yesterday, if I recall correctly, as a basis for his reasons for inquiring of Professor Daggett a letter from a Professor of Government at the University of New Hampshire stating in substance that the lecture was a glossed-over expression of dialectical materialism, if I can recall it. I believe that Mr. Wyman has in his possession a letter from that same professor written, I think subsequent to the letter which he offered yesterday stating in effect that the discussion by Mr. Sweezy was fair, that there was no attempt to indoctrinate, that, to use the terms of the letter, "in all honesty there was no 'call' for acceptance". It seems to me that consistent with the position we have taken here, we must request that that letter be made part of this record as an exhibit.

Mr. Wyman: Your Honor, I would be delighted to have that letter made part of this record. I would like to show my brother a letter here; and if he is going to offer this letter, which nevertheless does not change the professor's original characterization of the lecture as a glossed-over version of the materialistic dialectic, I certainly want this letter to be marked.

The Court: May I state, General, that I think your original objection to making the first letter part of the record was because you did not wish to disclose the name of the writer.

Mr. Wyman: That is correct.

The Court: However, you inadvertently or not a little later in your argument did give the name of the writer of [fols. 205-222] the letter, so that the objection that you originally had seems to me is no longer necessary.

Mr. Wyman: I am not objecting.

The Court: I understand, but I have mentioned something you may have forgotten.

Mr. Wyman: Undoubtedly that is the reason why the second letter which my brother refers to is being offered here today.

Mr. Millimet: Well, the reason I ask my brother to put this second letter in the record is that it has some tendency to sustain the position which we have taken here, if by any chance the Court should be in error as a matter of law. My brother offered it, as I recall, only on the issue of his reasons for having embarked on this investigation in the beginning, and I offer it on that point also, your Honor, as having some tendency to dispute the right to embark.

The Court: Very well, both letters may be marked and made a part of the record.

Mr. Millimet: Excuse me, I'd like to amend my statement. My position is this, your Honor. The Attorney General, I feel, under this statute is called upon to exercise discretion in determining how far he shall push his investigation. I offer it on that issue, as to whether or not he properly exercised his discretion. The letter which my brother just showed to me is dated June 29, 1954, and I do not see how it could be material on this point.

The Court: I am sorry. I thought you were talking about the first letter. May I see the letters?

Mr. Wyman: This is the original letter that my brother is talking about.

Mr. Millimet: May I see the date it was received?

The Court: May 27, 1954.

Mr. Millimet: Thank you.

Mr. Phinney: I suppose I am involved here somehow, your Honor. I haven't seen anything yet.

The Court: You may read it first.

Mr. Phinney: Certainly not, sir. I guess I have a copy; I think this must be the same one.

The Court: Yes. There is no objection, I take it, to the May 27 letter being marked?

Mr. Wyman: No, your Honor.

The Court: All right.

(Letter of Jack Holden to Mr. Wyman received May 27, 1954, received and marked Exhibit No. 13.)

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[fol. 223] Mr. Phinney: If the Court please, in order that the record be entirely clear in view of the somewhat anomalous manner in which we have proceeded here to date, may

I respectfully inquire of the Court first of all whether the rulings made yesterday with regard to three general classifications of questions involved in the petition against Paul M. Sweezy, that is the rulings with regard to the Progressive Party, with regard to the lecture at the University of New Hampshire, and with regard to beliefs, are rulings of law and involve no findings of fact?

The Court: That is correct; and they will be applied by me to this particular case, even though I recognize the distinction, especially with reference to the lecture, between this case and the case of Professor Daggett.

And may I also state for the record that the counsel in this case, representing the defendant, participated by agreement of the Attorney General and counsel for Professor Daggett throughout the entire case involving Professor Daggett; and by agreement of the parties the entire record of that proceeding, together with all of the exhibits in that proceeding, may be considered part of this case for all purposes for which it may properly be used in this case. Is that agreeable to both parties?

Mr. Wyman: Yes, your Honor.

Mr. Phinney: Thank you, your Honor. I ask the question, your Honor, not because I feel that I have any particular persuasive or forensic ability, or ever expect to have any, but because I do have a deep and abiding conviction that the issues involved here are absolutely vital in so far as the rights of the citizens of this country to assemble peaceably for lawful purposes and to think as they choose and to express those thoughts, however heretical, however unorthodox, so long as they don't in any way threaten the state, are of paramount importance.

A very great judge said not too long ago, I believe, that the community is already in the process of dissolution where each man begins to eye his neighbor as a possible enemy, where non-conformity with the accepted creed, political as well as religious, is a mark of disaffection or where denunciation without specification of backing takes the place of evidence, where orthodoxy chokes freedom of dissent, where faith in eventual supremacy of reason has become so timid that we dare not enter our convictions in the open lists to win or lose. That is what Mr. Justice

Learned Hand thinks. And we are here, my client and I, [fol. 224] in this case because not everyone is that timid.

Now it's with the utmost respect for this Court, with the respect that I think transcends the norm, but because of the issues here, the very grave constitutional issues, as to whether people can gather peaceably for political purposes without the yoke of the administration around them, whether people can think freely and express those thoughts without the policeman's knock, that I am going, with the utmost respect for this court, on the questions that are here presented, to instruct my client to refuse to answer, not out of disregard for this tribunal, but so that in the orderly course of the determination of this sort of thing they can be presented to the appellate court.

Now, there is one further thing, your Honor, which I think the record of this case should contain, something I haven't mentioned heretofore but something which I feel it is important to place in this record for whatever construction is to be placed upon it. I want this Court to know, and I say this as an officer of the court, as a fact personally known to me, that Stuart Conner, the special assistant to the Attorney General in this investigation, was busily engaged in taking license plate numbers of people attending this hearing.

Mr. Wyman: Your Honor, is my brother testifying?

Mr. Phinney: I will be glad to in that respect, if there is any need to.

Mr. Wyman: I believe we have a rule.

Mr. Phinney: I don't think Mr. Conner will deny that.

Mr. Wyman: I would be delighted to apprise the Court of the character of some of the individuals involved, if it's desired. I'd be glad to tell the Court at least of one or more of the individuals involved and show him their transcripts in this particular investigation, if his Honor would like.

Mr. Phinney: I simply want the record to show.

The Court: Very well, the record shows. I take it you do not desire to deny that your associate counsel has been doing that.

Mr. Wyman: Your Honor, I believe if Mr. Phinney wishes to put anyone on the witness stand in this proceed-

g, he is entitled to do so. I do not conceive it to be proper
ractice for an attorney to testify as to matters of fact as
witness. I think we have a rule against it in our rules of
ourt. If Mr. Phinney, as a part of the defense of Mr.
weezy, wishes to put Mr. Conner on the witness stand, he
entitled to do so, but the point is here I consider it to be
holly irrelevant, highly prejudicial, and an effort to show
at through the most indirect and yet vicious manner that
ere is what my brother would like to indicate a Gestapo in
peration, and I therefore move that his remarks to that
tent be stricken completely from the record unless he
ol. 225] wishes to introduce them in the proper form.

Mr. Phinney: If they are denied I will be glad to call Mr.
onner and put him on the stand.

The Court: Well, the entire matter is completely im-
aterial to the particular issue at hand. You have made
our record. The record may stand.

Mr. Phinney: All right, your Honor.

The Court: Let's continue with the hearing.

Mr. Phinney: Thank you, your Honor.

The Court: Do you desire to make a statement?

Mr. Wyman: Only a very brief statement; simply to say
r the purpose of the record, inasmuch as I have reason
expect that this transcript may eventually pass before
e eyes of the higher judicial authority, that no question,
gardless of what my brother says, of non-conformity is
volved in any respect and that the safety and security of
e state and the nation against the very policeman's knock
the early hours of the morning that my brother refers
is exactly the purpose of the legislative investigation to
termine whether what we have here is dissent, unortho-
oxy, heresy, legal or subversion.

The Court: All right. Will you take the stand.

(Witness sworn by the clerk.)

PAUL M. SWEEZY—Witness.

Direct examination.

By Mr. Wyman:

Mr. Phinney: Very briefly, for the purpose of the record, I simply want to object to any questions being asked of Mr. Sweezy on the grounds discussed at some length, to shorten it up, by Mr. Millimet in the questioning of the Daggett matter this morning; that is, on the basis of the ground there has been no evidence on which to base the asking of these questions.

The Court: All right. Now, the record will show that the Attorney General and counsel for Mr. Sweezy went over the questions listed in the petition at the bench, and the questions which appeared to be the pertinent ones to be asked and which were not but were included within my ruling were discussed, and those were the ones that are to be asked. Your exception will be saved to the asking of those particular questions.

Mr. Phinney: Actually, your Honor, not to unduly delay any of this, my objection in the first instance was not so much as to that, but was directed to the fact that no evidence has been presented to support or to warrant the asking of the questions.

I don't want to go into a statement of the law, since Mr. [fol. 226] Millimet did this morning, but I do want to preserve my rights in that connection.

The Court: I understand, and your rights will be preserved. I think it's clear from my prior rulings that my ruling is made as a matter of law and is not based upon any discretion or an consideration of the testimony or evidence in the case.

You may continue.

Q. Again simply for the record, Mr. Sweezy, the questions which appear in the record——

The Court: You'd better identify Mr. Sweezy for the record.

Q. What is your name?

A. Paul M. Sweezy.

Q. Where do you live?

A. Wilton.

Q. I will ask you simply the questions which appear in he petition in this case. I have already received permis-ion from his Honor to break this question down into two omponent parts. I will read the question first and en-leavor to break it down in two component parts without leviating from its content. The question as it appears in he record, "Was she [Nancy Sweezy] active in the for-nation of the Progressive Citizens of America, working vith individuals who were then members of the Commu-nist Party?" I will break that down by asking you first: Was she, Nancy Sweezy, your wife, active in the formation f the Progressive Citizens of America?

A. I decline to answer the question on advice of counsel nd for reasons stated by counsel.

The Court: You are directed to answer all the questions ut to you by the Attorney General that are in accordance vith the questions to be asked from this petition.

By the Court:

Q. Is it clear that your refusal to answer is not based pon either the fifth amendment under the United States 'onstitution or the fifteenth article of the New Hampshire 'onstitution?

A. Yes, sir.

By Mr. Wyman:

Q. Was Nancy Sweezy then working with individuals who were then members of the Communist Party?

The Witness: Your Honor, may I answer by saying, "The same answer.", or do I have to repeat the formula every time?

The Court: I think you should repeat your formula.

A. I decline to answer the question on advice of counsel nd for reasons stated by counsel.

Q. Question. Was Charles Beebe active in forming the 'rogressive Citizens of America?

A. I decline to answer the question on advice of counsel nd for reasons stated by counsel.

Q. Question. Did he work with your present wife—Did 'harles Beebe work with your present wife in 1947?

A. I decline to answer the question on advice of counsel and for reasons stated by counsel.

Q. Question. Was he then a member of the Communist Party?

The Court: That question was answered in the original.

Mr. Phinney: I don't have any objection, since it has [fol. 227] been asked, to have it answered now.

The Court: All right.

A. Mr. Wyman, I told you that I didn't know any members of the Communist Party then or later.

Q. Question. Mr. Sweezy, where and when did you first know Abraham Walenko?

Mr. Wyman: Well, your Honor, there is a series here. I don't know if it's going to make sense without going through the series.

The Court: Why don't you read your questions and answers down to that point?

Mr. Wyman: Yes. "Mr. Sweezy, where and when did you first know Abraham Walenko?"

The Witness: Want me to read the answer?

Mr. Wyman: No, I will read the answers till we get down to the point.

Answer. "I think it was in Manchester in 1948 sometime. Question. You don't remember just where you first met him? Answer. No. Question. Have you been to his house in Weare? Answer. Yes. Question. When did you go to his house in Weare? Answer. During 1948. Question. Did it have anything to do with the Communist Party? Answer. No."

Q. Did it have anything to do with the Progressive Party?

A. I decline to answer the question on advice of counsel and for reasons stated by counsel.

Mr. Wyman: "Now, Mr. Sweezy, did you give a lecture at the University of New Hampshire Monday, March 22, 1954? Answer. Yes."

Q. What was the subject of your lecture?

A. I decline to answer the question on advice of counsel and for reasons stated by counsel.

Mr. Phinney: I think, so that the record will be correct in all respects, your Honor, and since I think and have always maintained that the Attorney General is entitled to know whether there was any advocacy of overthrow of government by force and violence, that the answers as given in the transcript and as contained in the petition should appear here. It's at least a partial answer. Do I make myself clear to the Court?

The Witness: Could I answer as given in the transcript of my answer here?

Mr. Wyman: Well, your Honor, I think it is sound that if the witness answers in part on a subject that we are entitled to an answer in full. I don't think the witness can make an election as to how much of the question he will answer and then get three or four lines down and say that is as much as he is going to say. The petition is already on file in the case. The petition will be transferred. The answer of the witness is in the petition. What more is desired?

[fol. 228] The Court: I think your record is clear; and I think your witness may do as he wishes with reference to answering or not answering. As I say, he may do what he wishes. He may not do what he wishes as far as this Court is concerned.

Mr. Phinney: I am a little troubled, not by the record, your Honor, but by the very nature of these proceedings. As we have endeavored to indicate from the outset, we recognize the Attorney General is entitled to ask about subversive activities as defined in the act; and his answer to the effect that he didn't advocate, then or at any other time, overthrow by force and violence is of some importance. Beyond that, we get into the constitutional questions raised, and those are the only questions that I want this record to show are raised.

Mr. Wyman: Well, in order to determine the truth or falsity of his answer, at least as a matter of credibility, I think if he takes that position that it is then proper to ask him just what he did say at the lecture.

The Court: There is nothing for me to make a ruling on that I know of.

Mr. Phinney: All right.

Mr. Wyman: The next question, I believe, is at the top of page 7, in accordance with our agreement.

Mr. Phinney: You asked then that question midway down page 4.

Q. What was the subject of your lecture?

A. I decline to answer the question on advice of counsel and for reasons given by counsel.

Q. Top of page 7, question. And now; do you believe in Communism?

A. If the definition and characterization of Communism are those presented in the preamble to the 1951 act, the answer to that is no. Beyond that, however, I decline to answer the question on advice of counsel and for reasons given by counsel.

The Court: The next one I have checked is the second from the bottom of page 7.

Q. Question. This is following, now, the question which you originally declined to answer on advice of counsel. Have you ever made the statement to anybody that you believed in Communism?

A. Not that I recall.

Q. Question. Didn't you tell the class at the University of New Hampshire on Monday, March 22, 1954, that Socialism was inevitable in this country?

A. I decline to answer that question on advice of counsel and for reasons already stated by counsel.

Mr. Wyman: Without repeating the next question checked in the middle of page 8, it's the same question. May that be agreed?

Mr. Phinney: Yes.

Q. Question. Was Charles Beebe active in the Progressive Party in New Hampshire?

[fol. 229] Mr. Phinney: I suppose that was asked already, wasn't it?

Mr. Wyman: Progressive Citizens.

Mr. Phinney: Excuse me.

A. I decline to answer the question on advice of counsel and for reasons given by counsel.

Q. Question. Would you care to tell me what the content of the lectures was which you gave in 1951 and 1952?

The Court: The answer to that was, "No, I would not care to." Don't you remember we discussed that one?

Mr. Wyman: He says, "No, I would not care to."

The Court: Well, he answers the question.

The Witness: He said, "Would you care to?"

Mr. Wyman: The record showing, then, "No."

The Court: There is no failure to answer that question due to the form of the question.

Q. Did you advocate Marxism at that time?

A. I decline to answer the question on advice of counsel and for reasons given by counsel.

Q. Question. Did you advocate Communism at that time?

The Court: He answers that question, General.

Mr. Wyman: I am sorry, your Honor. It's an oversight. The record shows the witness answered, "No. No, I didn't."

Q. Question. Did you express the opinion, or did you make the statement at that time that Socialism was inevitable in America?

Mr. Phinney: I thought that came within the opinion exclusion. Or I guess that is back to the lecture. I am sorry.

The Court: This again refers to the lecture. The same question as previously asked.

A. I decline to answer the question on advice of counsel and for reasons stated by counsel.

Q. Question. Did you in this last lecture on March 22 or in any of the former lectures espouse the theory of dialectical materialism?

A. I decline to answer the question on advice of counsel and for reasons given by counsel.

Q. Question. I have in the file here a statement from a person who attended your class, and I will read it in part because I don't want you to think I am just fishing. "His talk this time was on the inevitability of the Socialist program. It was glossed-over interpretation of the ma-

terialistic dialectic." Now, again I ask you the original question.

Mr. Phinney: Well, now, I don't know that we discussed this at the beach, your Honor, but in view of the exhibits introduced here in the Daggett case this morning, the last one, it seems to me that is a highly improper question coupled with the earlier exhibit from the same source.

The Court: I am not quite clear by the last phrase there, "Now, again I ask you the original question." I am wondering now if that refers back to the second question from the bottom of the page on page 9. Do you [fols. 230-233] think that is what that refers back to?

Mr. Wyman: No, sir. It refers back, I believe, to the question which was last asked of him in this particular excerpt from the transcript here today. Did you in this last lecture on March 22 or in any of the former lectures espouse the theory of dialectic materialism?

The Court: All right.

The Witness: That is the way I understood it.

The Court: That is the way you understood the question?

The Witness: Yes, sir.

Mr. Phinney: My point is, your Honor, that if the Attorney General believed the source of information which produced him with the statement it was a glossed-over aspect of the materialistic dialectic in the first instance, the later letter from the same source clearly told him that it wasn't, so that the question under no circumstances can have any bearing.

Mr. Wyman: In the first place, your Honor, I submit the later letter from the same source did not clearly say that it wasn't; and in the second place, no matter what that individual may have said, I submit that it is a proper question, a germane question, and a relevant question in and of itself without any showing from any person.

The Court: I don't see it makes much difference because it is the same question as was previously answered. The question may stand. You may have an additional exception to the form of the question.

A. I decline to answer the question on advice of counsel and for reasons given by counsel.

Mr. Wyman: That exhausts the questions here in the transcript, or rather in the petition, your Honor.

The Court: All right. You are ordered to answer the questions which you have declined to answer.

A. Your Honor, I decline to answer the questions still on advice of counsel and for the reasons presented by counsel.

By the Court:

Q. And for no other reasons?

A. Yes, sir; no other reasons.

The Court: You may step down.

JUDGMENT OF CONTEMPT AND COMMITMENT

The Clerk: Paul M. Sweezy, kindly rise. In Equity No. 176, which is petition, State of New Hampshire by Louis C. Wyman, Attorney General, vs. Paul M. Sweezy, in the present state of the record the Court has made the following order: Paul M. Sweezy is found and adjudged in contempt of this Court. Ordered committed to the County Jail and there remain until purged of contempt. You are in the custody of the sheriff.

* * * * * * *

[fol. 234] The Court: I am not disposed to go as low as $500. I will make it $1,000. I will set bail at $1,000. I am not disposed to go as low as $500. All right. You understand your client is in custody until bail is arranged?

Mr. Phinney: Yes, your Honor. For the purpose of the record, your Honor, I think perhaps it has been done, but it will do no harm to be sure of it, I would like to incorporate and embody those requests made by Brother Millimet in the Daggett matter as my requests in the Sweezy matter. I think that has already been done actually.

Mr. Wyman: I think it has been done because we have the whole record and supplemental memorandum and the memorandum No. 2, and all of the exhibits, the House Committee on Un-American Activities report, they are all exhibits.

The Court: I will rule that any rulings that I made on the requests of Brother Millimet in the Daggett case

may be equally applied to the Sweezy case as though they were requests made by Brother Phinney in the Sweezy case.

Mr. Phinney: And that the requests were as though made by me in the Sweezy case?

The Court: That is correct.

Mr. Phinney: I think then I will notify you that I will appeal.

The Court: Bill of exceptions within fifteen days after receipt of transcript. If you want any further time, just ask for it.

[fol. 235] IN THE NEW HAMPSHIRE SUPREME COURT

No. 4395

LOUIS C. WYMAN, Attorney General

v.

PAUL M. SWEEZY

CERTIFICATE OF DOCKET ENTRIES

Merrimack: Entered January 28, 1955.

Hearing January 3, 1956.

March 6, 1956. Goodnow, J. Exceptions overruled. (Decision of Court.)

March 16, 1956. Defendant's motion for rehearing filed.

March 29, 1956. Motion for rehearing denied; opinion modified.

April 4, 1956. Defendant's second motion for rehearing filed.

April 4, 1956. Memorandum of Attorney General in opposition to second motion for rehearing filed.

April 19, 1956. Second motion for rehearing denied.

April 19, 1956. Notice of appeal to United States Supreme Court filed.

A true copy attest:

George O. Shovan, Clerk of the New Hampshire Supreme Court. (Seal.)

April 20, 1956.

[fol. 236] IN THE SUPREME COURT OF NEW HAMPSHIRE

LOUIS C. WYMAN, Attorney General

v.

PAUL M. SWEEZY

OPINION—March 6, 1956

Petition, under R. L. *c.*, 370, *ss.* 18 and 19 (now RSA 491: 19, 20) brought by the Attorney General seeking an order compelling a witness to answer certain questions which he had refused to answer during the course of an investigation of subversive activities conducted by the Attorney General pursuant to a joint resolution of the Senate and House of Representatives. Laws 1953, *c.* 307. See Laws 1955, *c.* 197.

During his testimony before the Attorney General, the witness stated that he has never been a member of the Communist Party and the Attorney General makes no claim to the contrary. The witness did not invoke the Fifth Amendment of the Federal Constitution or the Fifteenth Amendment of the New Hampshire Constitution as a basis for his refusal to answer certain questions but specifically disavowed any reliance upon them.

At the hearing on the petition to the Superior Court, the transcript of two hearings conducted by the Attorney General at which the defendant was questioned, as well as the exhibits introduced at those hearings, were made a part of the record. On the basis of these transcripts and exhibits as well as the briefs and arguments of counsel, the Trial Court ruled as to the relevancy of the questions propounded to the defendant by the Attorney General to which answers had been refused.

As to "inquires which related to opinion and beliefs, and answers to hypothetical questions," the Court ruled that these were not relevant. Other questions were deemed to be relevant and the defendant was ordered to answer them. Upon his refusal to do so, he was found in contempt of court.

One group of questions which the defendant was ordered to answer was concerned with the subject matter and con-

tent of a lecture given by him at the University of New Hampshire on March 22, 1954. The Trial Court ruled that these questions were relevant to the Attorney General's investigation, on the basis of "the sections in the statute which relate particularly to teaching or advocating communism; and I rule as a matter of law that on the basis of that, the Attorney General is entitled to inquire into the actual content of any lecture given at any school."

By means of the other group of questions in controversy, the Attorney General sought information as to whether certain named persons were active in the Progressive Citizens of America or the Progressive Party in this state. The Trial Court ruled that these questions were also relevant "since under the statute the Attorney General is directed to inquire . . . into any communist infiltration into any political party or organization."

To these rulings and to the denial of his requests for findings and rulings the defendant excepted. His bill of exceptions was allowed and transferred by *Griffith*, J. Other facts appear in the opinion.

Louis C. Wyman, Attorney General (by brief and orally), *pro se*.

[fol. 237] *Sheehan, Phinney & Bass* (*Mr. Phinney* orally) for the defendant.

Joseph A. Millimet (by brief and orally), as *amicus curiae*.

George Soll (of New York) for the Academic Freedom Committee of the American Civil Liberties Union as *amicus curiae*.

Goodnow, J. The Attorney General was chosen by the Senate and House of Representatives as a legislative committee to make an investigation "with a view to providing [the Legislature] with information upon which further action by it may be predicated." *Nelson* v. *Wyman*, 99 N. H. 33, 37, 38. The matters concerning which it was authorized to inquire were limited to those "relevant and pertinent to the main object of the investigation." *Id.*, 39. The questions asked of a witness appearing before it must likewise fall within this limitation. If they do not, they are irrelevant and need not be answered. When the rele-

vancy of inquiries made of him are questioned by a witness and he declines to answer, the committee may then petition the Superior Court, as it did in this case.

The principal purpose of an action commenced by such a petition is the determination of the relevancy of those questions put to the witness which he has declined to answer. The petition does not seek to have the defendant found in contempt of the investigating committee nor "to vindicate public authority," as he claims. Instead, it "seeks to have the Superior Court propound to the defendant the same questions as were asked him by the Attorney General and in the event he persists in the same answers that he be adjudged *in contempt of the Superior Court.*" (Emphasis supplied) *State* v. *Uphaus*, 100 N. H. 1, 3. In connection with the petition, the Superior Court is authorized "to proceed in the matter as though the original proceedings had been in court." RSA 491:20. It is thereby granted jurisdiction over the investigation to the extent required by the subject matter of the petition. *State* v. *Uphaus, supra*, 3, 4. Within that area, the Court may order the defendant to answer questions which it deems to be relevant according to the standards applicable in legislative investigations.

The relevancy of questions asked by an investigating committee is not to be determined solely by the standards applicable at the trial of issues in court. "Because of the scope and purpose of [legislative] investigations, pertinency . . . is necessarily broader than relevancy in the law of evidence." *Orman* v. *United States*, 207 F (2d) 148, 153. It is not so broad, however, that a question may be sustained as relevant on a mere possibility that it might lead to later relevant questions. *Bowers* v. *United States*, 202 F (2d) 447, 452. The joint resolution authorizing the investigation is the guide to relevancy. If the question is directed at a possible answer (*Orman* v. *United States*, *supra*, 154) which would be reasonably concerned with the main object of the investigation, it is relevant. See *Sinclair* v. *United States*, 279, U. S. 263, 299.

Unless the relation of a particular question is apparent on its face, the burden of establishing its relevancy rests upon the Attorney General. In support of his assertion of

relevancy, he is not confined, however, to "the rules of evidence and the presumptions of law applicable in criminal cases," as contended by the defendant. Relevancy, as it applies to a legislative investigation, may stem from [fol. 238] a wide variety of factors. The context in which a question is asked may indicate its relevancy. *Bowers* v. *United States*, 202 F. (2d) 447, 449. If it does, the transcript of the defendant's entire testimony before the committee may alone furnish a sufficient basis for the court's decision.

In this case, when the Attorney General, as the investigating committee, put the questions to the defendant, he possessed information concerning the defendant's published writings, the persons with whom he had been associated, and his apparent activities in certain organizations. The Attorney General had also acquired in the course of his investigation a knowledge of the tenets of the Communist Party and the methods and operations of communists and their sympathizers. Background information of this sort may also indicate the relation of questions asked by the committee to the subject matter of the investigation. *Orman* v. *United States*, 207 F. (2d) 148, 155. If considered to reasonably do so by the court to which it is disclosed, it may furnish a sufficient basis for determining relevancy.

In connection with a lecture entitled "Socialism" given by the defendant as a guest lecturer before a student class at the University of New Hampshire in March, 1954, he was asked "What was the subject of your lecture?" This question the defendant declined to answer and replied: "I stated under oath . . . that I do not advocate or in any way further the aim of overthrowing constitutional government by force and violence. I did not so advocate in the lecture I gave at the University of New Hampshire. In fact, I have never at any time so advocated in a lecture anywhere. Aside from that I have nothing I want to say about the lecture in question." He also refused to answer the following questions: "Didn't you tell the class at the University of New Hampshire . . . that Socialism was inevitable in this country?" "Did you express the opinion, or did you make the statement at that time that Socialism

was inevitable in America?" "Did you advocate marxism at that time?" and "Did you in this last lecture on March 22 or in any of the former lectures espouse the theory of dialectical materialism?" Upon consideration of the transcript of the hearings before the Attorney General and arguments of counsel, the Superior Court ruled these questions to be "relevant under the statute under which the Attorney General is acting" basing its ruling "upon the sections of the statute which relate particularly to teaching or advocating communism."

The statute referred to (RSA *ch.* 588) provides that persons who advocate or teach "any person to commit, attempt to commit or aid in the commission of any act intended to overthrow, destroy or alter" existing government by force or violence are either classified as subversive persons by section 1 or are subjected to criminal penalties by section 2, depending upon whether such advocacy or teaching has been done "knowingly and wilfully . . . under such circumstances as to constitute a clear and present danger." (*s.* 2). *Nelson* v. *Wyman*, 99 N. H. 33, 37.

"It is not always easy to distinguish teaching or advocacy in the sense of incitement from teaching or advocacy in the sense of exposition or explanation." *Dennis* v. *United States*, 341 U. S. 494, 572. The distinction is one of fact. The defendant's denial that he advocated, taught or in any way furthered the aim of overthrowing constitutional government by force or violence in his lecture is [fol. 239] simply his determination of that fact, which the committee could believe or not as it saw fit. The witness could not by his answer impose upon the investigating committee the burden of producing evidence that a doctrine aimed at the violent overthrow of existing government was in fact advocated by him before it could inquire of him concerning the lecture.

An examination of the transcript and the background information furnished to the Court by the Attorney General discloses that the defendant is a socialist and for several years has advocated "the classical conception of socialism: public ownership of the means of production and general economic planning," a system which he stated

exists today only in communist countries. He testified that he does not advocate the use of force or violence to establish this system in this country as was done in Russia and China, that he considers himself to be a Marxist in the sense that "Marxism is a body of doctrines about society, history and philosophy .... not a form of society" and that he is not a member of the Communist Party, has never been one and knows no members of it in this state. He acknowledged past and present affiliations with various organizations and committees which have either been designated by the Attorney General of the United States as subversive or reported by the Committee on Un-American Activities of the United States House of Representatives to be dominated by members of the Communist Party.

The record also discloses that in 1953, the defendant was co-editor of an article appearing in a publication known as the Monthly Review which reads in part as follows: "Our Country is preparing to practice violence on a hitherto undreamed-of scale to preserve a social order . . . Capitalism, the organization of society according to the barbaric principle of private profit, is the scourge of mankind; and violence designed to preserve it is doubly damned, once for itself and once for its purpose. Those of us who have socialism in our bones . . . must necessarily judge the violence of the socialist countries differently. We hate it . . . but history . . . decreed that the economic foundations of the society of the future must be laid in backward countries, not only without the assistance of the advanced countries but against their ruthless and implacable resistance. It was thereby rendered inevitable that the process should be difficult, painful and violent. But the process does go forward—of that the majestic successes of the Soviet economy . . . is irrefutable proof. For the first time in history we can say that violence is being used to protect regimes which are doing their utmost to create a society which will be able to dispense with violence. That makes all the difference."

Against this background, the Attorney General was reasonably warranted in making his inquiry. The questions concerning the subject matter of the defendant's lecture and those directed at ascertaining what, if anything, the

defendant said about marxism and about the inevitability of socialism in this country were clearly relevant to aid the committee in determining whether the defendant had, either "knowingly and wilfully" or otherwise, advocated or taught the overthrow, destruction or alteration of existing government by force or violence.

Whether the defendant's lecture espoused dialectical materialism was equally relevant. According to the His- [fol. 240] tory of the Communist Party of the Soviet Union, introduced as an exhibit by the Attorney General at the hearing before the Court, "dialectical materialism is the world outlook of the Marxist-Leninist party." Standing alone, espousal of only one of several tenets of the communist faith would not necessarily establish advocacy of all communist beliefs including those concerned with overthrow of existing government by force and violence. On the other hand, in determining whether a lecture concerned with socialism and marxism, as defined by the defendant, went so far as to include advocacy of force and violence, the espousal of dialectical materialism would have some tendency to indicate that there may also have been an endorsement of the doctrines of the Communist Party.

In addition to specific rulings concerning the questions asked of the defendant about his lecture, the Superior Court also ruled that "the Attorney General is entitled to inquire into the actual contents of any lecture given at any school." This ruling was not essential to the case. It seems appropriate to note in this opinion, however, that it is incorrect standing alone and without qualification. Neither the resolution authorizing this investigation nor the statute to which it refers contains any special directive, express or implied, concerning schools or lectures given at schools.

The authorization given to the Attorney General to act "upon such information as in his judgment may be reasonable or reliable" limits the school lectures about which he may inquire to those concerning which he possesses reasonable or reliable information indicating that the violent overthrow of existing government may have been advocated or taught, either "knowingly and wilfully" or not. See *Oklahoma Press Publishing Co.* v. *Walling*, 327 U. S.

186, 209. It does not, and could not legally, authorize him to examine private citizens indiscriminately in the mere hope of stumbling upon valuable information. *Orman* v. *United States*, 207 F. (2d) 148, 155.

One of the matters as to which the Attorney General was directed to inquire was the existence of subversive organizations in this state in violation of the subversive activities act. In seeking to determine whether the Progressive Party in New Hampshire, and its predecessor, an organization known as the Progressive Citizens of America, might be or have been subversive organizations, the Attorney General asked the following questions of the defendant: "Was . . . your wife active in the formation of the Progressive Citizens of America?," "Was [she] then working with individuals who were then members of the Communist Party?," "Was Charles Beebe active in forming the Progressive Citizens of America?," "Was Charles Beebe active in the Progressive Party in New Hampshire?," "Did Charles Beebe work with your wife in 1947?" and, in connection with a visit of the defendant to the home of Abraham Walenko, "Did it have anything to do with the Progressive Party?"

The defendant has admittedly been active in the Progressive Party. He handled most of its relations with the national office and was a candidate for presidential elector on its ticket in this state in 1952. He offered to answer questions concerning the activities of any person known to him "if such person were identified as a subversive or a communist as defined in the" subversive activities act but declined to answer the questions in controversy as irrelevant, on the grounds that the persons inquired about were not so identified and because the Progressive Party is and was a lawful political organization concerning which [fol. 241] no right of inquiry existed.

The statute defines a "subversive organization" as any group of persons associated together for joint action, including a political party, which engages in or advocates or teaches "activities intended to overthrow, destroy or alter" existing government by force or violence. RSA 588:1. Persons who "knowingly and wilfully" assist in the formation, participate in the management or con-

tribute to the support of such an organization, knowing it to be such, are subject to criminal penalties. RSA 588:2 (d). Persons who are members of such an organization not "knowingly or wilfully" or are members without knowing the nature of the organization, are classified as subversive persons. RSA 588:1.

The fact that the Progressive Party "is, if still extant, or certainly was, a lawful political organization," as asserted by the defendant, did not preclude inquiry by the Attorney General concerning its purposes and activities until it was shown to be a subversive organization. Under the joint resolution authorizing this investigation, the Attorney General is not authorized to inquire indiscriminately concerning organizations in this state. Only when he possesses "reasonable or reliable" information indicating that an organization may have as one of its purposes, or may be engaged in activities aimed at, the violent overthrow of existing government, is he empowered to inquire into the purposes, activities and membership of that organization. That he did possess information which was sufficient to reasonably warrant inquiry concerning the Progressive Party is evident from his statement made during the hearings held before him that "considerable sworn testimony has been given in this investigation to the effect that the Progressive Party in New Hampshire has been heavily infiltrated by members of the Communist Party and that the policies and purposes of the Progressive Party have been directly influenced by members of the Communist Party." See *Oklahoma Press Publishing Co.* v. *Walling*, 327 U. S. 186, 209.

Whenever evidence has been received by the committee concerning a particular organization which indicates a reasonable need for further inquiry to determine whether that organization is or is not a subversive one, questions concerned with its activities and purposes as well as those concerned with membership or participation in it by named persons are necessarily relevant. The policies of an organization are established by its members, or sometimes by a small minority of its members. Information as to policies may be obtained in some instances from those members who have participated in the making of

them. On the other hand, if subversive purposes actually exist, the witness may not fully disclose his knowledge concerning them and other methods must be used to determine their existence. The extent to which members of the Communist Party are included in the membership of an organization and are active in controlling its policies is clearly related to the question of whether the organization is subversive. A person who has been active in an organization, as was the defendant in the Progressive Party, is a natural source from which the committee may acquire information concerning the purposes of the organization or the identity of those members who established them.

It is on information of this sort that a determination concerning the nature of an organization may be made by a legislative investigating committee. Whether the [fol. 242] persons referred to in the questions were or were not in fact Communist Party members or subversive persons is not decisive of the issue of relevancy and the defendant was not entitled to proof of that fact before being required to answer. The questions called for answers concerning the membership or participation of named persons in the Progressive Party which, if given, would aid the Attorney General in determining whether that party and its predecessor are or were subversive organizations. They were accordingly relevant to the subject matter of the investigation.

The resolution authorizing the investigation is not so vague and lacking in standards as to violate the defendant's right to due process. The Attorney General is not authorized to act on the basis of rumors but only upon information which is "reasonable or reliable." See *Oklahoma Press Publishing Co.* v. *Walling*, *supra*, 216, 217. Nor is the relevancy of the questions which he is entitled to ask established by "the wheels that go around in the Attorney General's mind." As we have previously noted in this opinion, the questions which may be put to a witness must be directed at a possible answer which would be reasonably concerned with a main object of the investigation. Those objects are set forth in the resolution as follows: "to make full and complete investigation with respect to violations of the subversive activities act of

1951 and to determine whether subversive persons as defined in said act are presently located within this state." Laws 1953, *c.* 307. The sections of the act to which reference is made, and with which the circumstances of this case are concerned, define subversive organizations and persons (RSA 555, 1) and the acts of advocacy and teaching (*Id.*, 2 (b)) and participation in a subversive organization (*Id.*, 2 (d)) which are made criminal with sufficient clarity to satisfy the requirements of due process. *Nelson* v. *Wyman*, 99 N. H. 33.

It is important to note that the Attorney General is without authority to compel testimony. If he undertakes to act without a basis of reasonable or reliable information, the witness can refuse to answer. If a basis for inquiry exists but the questions which he asks are irrelevant, the witness can also refuse to answer. In either of these events, the Attorney General must, if he insists upon proceeding or receiving an answer to his questions, apply to the Superior Court for a determination of the disputed matter. Unlike the situation which prevails in criminal proceedings for contempt of a Congressional investigating committee (see *Bowers* v. *United States*, 202 F. (2d) 447), our procedure not only requires a determination by the Superior Court of the reasonableness of the Attorney General's basis for acting, if that question is disputed, and the relevancy of the questions to which answers have been refused but also an opportunity for the witness to answer such questions as have been found relevant by the Court, before a witness can be punished for contempt.

The right to lecture and the right to associate with others for a common purpose, be it political or otherwise, are individual liberties guaranteed to every citizen by the State and Federal Constitutions but are not absolute rights. 29 Ind. L. J. 162, 167. The inquiries authorized by the Legislature in connection with this investigation concerning the contents of the lecture and the membership, purposes and activities of the Progressive Party undoubtedly interfered with the defendant's free exercise of those liberties. He contends that there is no rational basis here for this inter- [fol. 243] ference. The issue thus raised involves a conflict between the principles underlying the broad and extensive

investigative powers of the Legislature and those upon which the individual rights guaranteed by the Constitution are based. The answer lies in a determination of whether the object of the legislative investigation under consideration is such as to justify the restriction thereby imposed upon the defendant's liberties. *Nelson* v. *Wyman*, 99 N. H. 33, 41. See *Communications Association* v. *Douds*, 339 U. S. 382, 397-400.

The restrictions upon the defendant's freedoms with which we are here concerned result from the investigation authorized by the Legislature and not from legislation directly limiting those freedoms, such as was considered in *Nelson* v. *Wyman*, 99 N. H. 33, 49, 50. "There is a vast difference between the necessities for inquiry and the necessities for action. The latter may be only when danger is clear and present but the former is when danger is reasonably represented as potential." *Barsky* v. *United States*, 167 F. (2d) 241, 247.

The problem of determining whether the threat of subversive activities in this state was sufficiently great to require an investigation and the consequent limitations upon civil liberties was resolved by the Legislature. Its adoption of the resolution authorizing the investigation was its judgment that the danger to existing government posed by subversive activities is potential. We have not changed our views of the Legislature's right to reach that judgment since our opinion in the *Nelson* case in which we upheld "the Legislature's decision to inquire of residents concerning activities aimed at the overthrow of government by force and violence, whenever they occurred." *Id.*, 42. The limits of the investigation are subject to control by the Trial Court and therefore should offer no opportunity for any official to "prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion" as claimed by the defendant, nor permit the exposure of witnesses to unfavorable publicity for the mere sake of exposure. Any stultifying effect which the investigation may have upon freedom of expression or any restriction which it may impose upon freedom of association will be in the limited area in which the legislative committee may reasonably believe that the overthrow of existing govern-

ment by force and violence is being or has been taught, advocated or planned, an area in which the interest of the State justifies this intrusion upon civil liberties. The inquiries which the defendant was directed to answer in this case came within this area.

Exceptions overruled.

All concurred.

[fol. 244] IN THE SUPREME COURT OF NEW HAMPSHIRE

[Title omitted]

DEFENDANT'S MOTION FOR REHEARING

Now comes the defendant, Paul M. Sweezy, and respectfully requests that he be granted a rehearing of the cause for the following reasons:

(1) Although the Court states in its opinion that questions must be directed to possible answers reasonably concerned with the main object of the investigation to be relevant, thereby recognizing the objective standard as set forth in *Orman* v. *United States*, 207 F. (2) 148, the opinion in its entirety compels the conclusion that the Court actually applied a subjective standard, that is, decided the relevancy of the questions on the basis of the person under interrogation. This we feel is error.

(2) The Court has ruled proper questions concerning marxism, the inevitability of socialism and dialectical materialism among others, although the statute (RSA ch. 588) is concerned with teaching, aiding, abetting, etc. the the clear and definite concept of "forcible overthrow" or revolution. We submit that this is error. It necessarily involves an interpretation of the statute which violates procedural due process by substituting an indefinite and vague concept for the clear statutory definition. The error is most apparent in that portion of the opinion wherein the Court states the questions were "relevant . . . in deter-[fol. 245] mining whether the defendant had either 'knowingly and wilfully' *or otherwise* (emphasis added) advocated or taught" forcible overthrow. Revolution is certainly a clear enough concept to preclude advocacy other

than knowingly or wilfully. The Court however indicates by its "or otherwise" that an indiyidual may advocate forcible overthrow of constitutional government without knowing or intending it. To reach this conclusion there must be substituted for the definite standards of the act an area where all standards are necessarily subjective and what a person means depends not upon plain and accepted usage of language but upon what a committee understands him to mean. Upon this basis there can be no standards of definiteness and the Court's interpretation of the statute we submit contravenes procedural due process.

(3) The defendant has never contended that the individual liberties guaranteed by State and Federal Constitutions are absolute. The defendant has conceded that the Legislature has broad rights of inquiry in the area covered by the joint resolution as well as in many others. The defendant respectfully submits however that the Court erred in concluding that questions concerning marxism, the inevitability of socialism and dialectical materialism are of such a nature as to abridge defendant's constitutional right to speak on the ground that a legislative committee may reasonably believe that these questions relate to forcible overthrow.

(4) The opinion states the defendant claimed the Attorney General was authorized to act on the basis of rumors. This was not the claim of the defendant but rather was the statement of the trial Court expressly assented to by the Attorney General. "The Court: . . . The other would be to take the attitude, which is, I understand him now, his attitude, that if he has rumors or anything of that nature that would indicate a possible interest by him, from the standpoint of this investigation, in the lecture, then that [fol. 246] constiuttes and makes it relevant from the standpoint of the investigation. Have I correctly stated your position?

Mr. Wyman: That is exactly it." Record page 164, lines 7 through 13.

Respectfully submitted, Paul M. Sweezy, By his attorneys, Sheehan, Phinney & Bass, By W. L. Phinney.

Dated: March 15, 1956.

[fol. 247] IN THE SUPREME COURT OF NEW HAMPSHIRE

[Title omitted]

DEFENDANT'S FURTHER MOTION FOR A REHEARING

Now comes the defendant, Paul M. Sweezy, and again respectfully requests that he be granted a rehearing of the cause, and assigns the following reason:

(1) Since March 29, 1956, when defendent's original motion for a rehearing was denied, the Supreme Court of the United States, on April 1, 1956, handed down an opinion in the case of *Pennsylvania* v. *Steve Nelson* (See The New York Times, Tuesday, April 3, 1956, City Edition, Page 28 for full text of the decision) in which it decided that ". . . Congress has occupied the field to the exclusion of parallel state legislation, that the Federal Government precludes state intervention and that administration of state acts would conflict with the operation of the Federal plan . . ." It would appear, therefore, that RSA, Chapter 588 is superseded as is Chapter 307 Laws of 1953 authorizing the Attorney General to make investigation with respect to violations of RSA Chapter 588 and to determine whether "subversive person" as defined in said Chapter 588, are within the state.

Respectfully submitted, Paul M. Sweezy, Sheehan, Phinney & Bass, By (S.) William L. Phinney, His Attorneys.

Dated: April 4, 1956.

[fol. 248] I certify that on the fourth day of April 1956, a copy of the within motion was mailed to Louis C. Wyman, Attorney General for the State of New Hampshire.

(S.) William L. Phinney.

[fol. 249] IN THE SUPREME COURT OF NEW HAMPSHIRE

[Title omitted]

MEMORANDUM IN OPPOSITION TO MOTION FOR REHEARING

Now comes the plaintiff, Louis C. Wyman, Attorney General, and respectfully submits this brief Memorandum in Opposition to the defendant's further motion for a rehearing in the above-entitled cause, for the following reasons:

(1) The grant of a rehearing would indicate that it is believed that there are substantial grounds for modification of the opinion in this case. The only possible grounds for such a modification raised by the defendant's further motion are simply that the decision in *Pennsylvania* v. *Steve Nelson* invalidates the Subversive Activities Act of 1951 in this state. RSA 588. Examination of the full text of the opinion in this case (U. S. Law Week, April 3, 1956, Vol. 24, No. 38, P. 4165) indicates on its face that the supersession found by the highest Court is confined to advocacy of the overthrow of the *government of the United States* by force and violence. Nowhere does the decision include supersession or even purported supersession of those separable provisions of state laws making it criminal to seek to destroy the state government itself. The majority opinion on this issue said in part:

> "The precise holding of the court, and all that is before us for review, is that the Smith Act of 1940, as amended in 1948, which prohibits the knowing advocacy of the overthrow of the Government of the United States by force and violence, supersedes the enforceability of the Pennsylvania Sedition Act which proscribes the same conduct."

[fol. 250] (2) Nowhere in the Constitution of the United States is there granted to the Federal Government, either expressly or by implication, any power whatever to take from the separate sovereign states their reserved police power to make it a crime to seek their own overthrow within their own borders. Pronouncement to the contrary would raise serious prospect of whether the General Court

should interpose the sovereign rights of this state under the 10th Amendment. The entire Subversive Activities Act of 1951 (RSA 588) is subject to separability. Taking any one of the definitions of proscribed conduct, it is found that it is therein made a crime to seek by force and violence to destroy, alter or overthrow the constitutional form of government of the United States, or of the State of New Hampshire, or any political subdivision of either of them. It would be difficult to use the English language any more specifically in indicating legislative intention that offenses against either or both governments were included. Furthermore, examination of the phraseology of the statute itself shows that before the word or in each case there is found a comma, further emphasizing that all *Pennsylvania* v. *Steve Nelson* does or even purports to do is to invalidate those portions of our basic law which deal with the overthrow of the *federal* government. *CF.*, RSA 588:1-2.

(3) Laws 1955, chapter 197, continued the legislative fact-finding investigation authorized by Laws 1953, chapter 307. Deletion of those clauses and phrases of the Subversive Activities Act (RSA 588) relative to overthrow of the government of the United States leaves the law intact insofar as it applies to attempts or advocacy of attempts to destroy, alter, or overthrow the government of the sovereign State of New Hampshire. The fact-finding investigation authorized by Laws 1953, chapter 307, thus remains in full force and effect except that should any developments therein lead to prosecutions it is beyond the power of the state in the state courts to now prosecute for attempts to [fol. 251] overthrow the Federal Government. This is all the decision in the Steve Nelson case purports to hold and it has no bearing whatever upon the decision in the case of *Wyman* v. *Sweezy*, which applies with full force and effect to legislative fact-finding investigations generally and to Paul M. Sweezy particularly.

Respectfully submitted, Louis C. Wyman, Attorney General.

April 4, 1956.

[fol. 252] [File endorsement omitted]

IN THE SUPREME COURT OF NEW HAMPSHIRE

LOUIS C. WYMAN, Attorney General

v.

PAUL M. SWEEZY

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed April 19, 1956

I. Notice is hereby given that Paul M. Sweezy, the above named respondent, hereby appeals to the Supreme Court of the United States from the final judgment of this Court, which overruled his exceptions to the decree of the Superior Court of Merrimack County, State of New Hampshire, adjudging him in contempt of the Superior Court in and for said County of Merrimack, and ordering him committed to the County Jail there to remain until purged of said contempt. Final judgment in this proceeding was entered April 19, 1956. Sweezy has been admitted to bail pending final decision of the questions presented herein.

This appeal is taken pursuant to 28 U. S. C. Sec. 2157 (2).

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

(1). Transcript of testimony, including Appendix A, attached thereto, of Paul M. Sweezy, at hearing before Attorney General Louis C. Wyman on January 8, 1954.

[fol. 253] (2). Transcript of testimony of Paul M. Sweezy at hearing before Attorney General Louis C. Wyman on June 3, 1954,

(3). Petition of Attorney General Louis C. Wyman dated June 11, 1954 in Merrimack County Superior Court.

(4). Answer of Paul M. Sweezy.

(5). Transcript of testimony of Paul M. Sweezy and record of hearing at Merrimack County Superior Court, June 28-30, 1954.

(6). Rulings of the Superior Court (Griffith, J.) Merrimack County.

(7). Bill of Exceptions of Paul M. Sweezy.

(8). Opinion of the New Hampshire Supreme Court.

(9). Motions of Paul M. Sweezy for rehearing.

(10). Final Judgment.

(11). Notice of Appeal.

III. The following questions are presented by this appeal:

(1) Whether Chapter 307, New Hampshire Laws of 1953, which the New Hampshire Supreme Court has construed to require the appellant, concededly not a Communist or a "subversive person" within the meaning of that law, but admittedly a socialist, under the penalty of indefinite confinement for contempt, to answer questions as to statements on socialist and economic theories made in lectures before classes at the University of New Hampshire, violates his right of free speech as guaranteed by the First and Fourteenth Amendments of the Constitution of the United States.

(2) Whether Chapter 307, New Hampshire Laws of 1953, which the New Hampshire Supreme Court has construed to require the appellant, concededly not a Communist or a "subversive person", within the meaning of that [fol. 254] law, under penalty of indefinite confinement for contempt to answer questions as to whether named individuals, unidentified as "subversive persons", were active in the Progressive Citizens of America or the Progressive Party, violates appellant's rights of free speech or assembly or the right to petition for redress of grievances, as guaranteed by the First and Fourteenth Amendments of the Constitution of the United States.

(3) Whether Chapter 307, New Hampshire Laws of 1953, which the New Hampshire Supreme Court has construed, as set forth in questions (1) and (2), is so vague and indefinite that it deprives appellant of due process of law as guaranteed by the Fourteenth Amendment of the Constitution of the United States.

(4) Whether Chapter 307, New Hampshire Laws of 1953, which the New Hampshire Supreme Court has con-

strued, as set forth in questions (1) and (2), is arbitrary and unreasonable and thereby deprives appellant of due process of law as guaranteed by the Fourteenth Amendment of the Constitution of the United States.

(5) Whether Chapter 307, New Hampshire Laws of 1953, which the New Hampshire Supreme Court has construed, as set forth in questions (1) and (2), violates Article VI of the Constitution of the United States in that it purports to deal with matters within the exclusive power of the Federal Government, and with respect to which the Federal Government has already legislated to the exclusion of State Legislation.

(6) Whether Chapter 307, New Hampshire Laws of 1953, which the New Hampshire Supreme Court has construed, as set forth in questions (1) and (2), constitutes a Bill of Attainder in violation of Article I, Section 10, of the Constitution of the United States.

Sheehan, Phinney & Bass, By William Phinney, Attorneys for Paul M. Sweezy, Appellant, 875 Elm Street, Manchester, N. H.

[fol. 255] Proof of Service (Omitted in Printing)

[fol. 256] SUPREME COURT OF THE UNITED STATES,
October Term, 1956

No. 175

PAUL M. SWEEZY, Appellant,

vs.

STATE OF NEW HAMPSHIRE by LOUIS C. WYMAN,
Attorney General

ORDER POSTPONING CONSIDERATION OF JURISDICTION—
October 8, 1956

Appeal from the Supreme Court of the State of New Hampshire.

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits.

October 8, 1956.

(2706-0)

JURISDICTIONAL STATEMENT

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In the

Supreme Court of the United States

OCTOBER TERM, 1955

No. 175

PAUL M. SWEEZY,
Appellant,

vs.

STATE OF NEW HAMPSHIRE
by LOUIS C. WYMAN,
ATTORNEY GENERAL,
Appellee

ON APPEAL FROM THE SUPREME COURT
OF NEW HAMPSHIRE

JURISDICTIONAL STATEMENT

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In the

Supreme Court of the United States

OCTOBER TERM, 1955

No.

PAUL M. SWEEZY,
Appellant,

vs.

STATE OF NEW HAMPSHIRE
by LOUIS C. WYMAN,
ATTORNEY GENERAL,
Appellee

ON APPEAL FROM THE SUPREME COURT
OF NEW HAMPSHIRE

JURISDICTIONAL STATEMENT

Appellant, Paul M. Sweezy, appeals from the judgment of the Supreme Court of New Hampshire, entered on April 19, 1956, overruling appellant's exceptions to an order of the Superior Court of New Hampshire compelling appellant to answer certain questions and adjudging him in contempt of court for refusing to answer. Appellant submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial Federal questions are presented.

OPINION BELOW

The opinion of the Supreme Court of New Hampshire, rendered March 6, 1956, is not yet officially reported but is unofficially reported in 121 Atl. (2d) 783. Two motions for rehearing were denied without opinion.

The opinion of the Supreme Court of New Hampshire and the second motion for rehearing are set forth in Appendix A to this Statement.[1]

JURISDICTION

Petition was filed by Louis C. Wyman, Attorney General of the State of New Hampshire, on June 11, 1954, in the Superior Court for Merrimack County, New Hampshire, pursuant to Revised Laws of New Hampshire (1942), Chapter 370, Sections 18 and 19 (now RSA 491, Sec. 19 and 20). The petition sought to compel appellant to answer certain questions which he had refused to answer during the course of an investigation conducted by the Attorney General of New Hampshire under New Hampshire Laws of 1953, Chapter 307, which delegated to the Attorney General power to investigate certain matters in connection with New Hampshire Laws of 1951, Chapter 193. After hearing, the Superior Court on June 30, 1954, ordered appellant to answer before the Court certain of the questions propounded by the Attorney General and; upon his refusal, adjudged him in contempt of court, and ordered him committed to the County Jail until purged of contempt (R. 230).[2]

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[1]In denying the first motion for rehearing the Supreme Court of New Hampshire modified its original opinion in minor respects. The opinion as printed in Appendix A (and in 121 Atl. (2d) 783) incorporates these changes.

[2]References designated "R" are to appellant's Bill of Exceptions to the rulings of the Superior Court, which include the transcript of proceedings before the Attorney General and the Superior Court.

Appellant thereupon excepted to the Superior Court's rulings and appealed to the Supreme Court of New Hampshire, the highest court of the State of New Hampshire. On March 6, 1956, the Supreme Court of New Hampshire overruled appellant's exceptions and affirmed the judgment and order of the Superior Court. Motion for rehearing was filed by appellant and denied on March 29, 1956. A second motion for rehearing was denied April 19, 1956.

Notice of appeal to the Supreme Court of the United States was filed with the Supreme Court of New Hampshire on April 19, 1956.

The jurisdiction of the Supreme Court of the United States to review the decision of the Supreme Court of New Hampshire on appeal is conferred by Title 28, United States Code, Sections 1257(2) and 2101(c). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on appeal in this case: *Gerende* v. *Board of Supervisors*, 341 U. S. 56; *Adler* v. *Board of Education*, 342 U. S. 485; *Wieman* v. *Updegraff*, 344 U. S. 183; *Slochower* v. *Board of Higher Education*, 350 U. S. 551.

QUESTIONS PRESENTED

1. Whether Chapter 307, New Hampshire Laws of 1953, which the Supreme Court of New Hampshire has construed as authorizing the Attorney General of New Hampshire, acting as a legislative committee, to compel appellant to answer questions concerning statements on economic and social matters made by appellant in lectures before classes at the University of New Hampshire, after appellant had testified that he did not advocate or in any way further the aim of overthrowing the government by force or violence in said lectures, and no showing was made to the contrary, violates appellant's right to freedom of speech as guaranteed

by the First and Fourteenth Amendments of the Constitution of the United States.

2. Whether Chapter 307, New Hampshire Laws of 1953, which the Supreme Court of New Hampshire has construed as authorizing the Attorney General of New Hampshire, acting as a legislative committee, to compel appellant to answer questions concerning the activities of appellant and certain others in connection with the Progressive Citizens of America and the Progressive Party, after appellant answered all questions regarding the use or advocacy of force or violence by said organizations and there was no showing said organizations ever used or advocated force or violence or were otherwise unlawful, violates appellant's rights to freedom of speech or assembly or the right to petition for redress of grievances, as guaranteed by the First and Fourteenth Amendments of the Constitution of the United States.

3. Whether Chapter 307, New Hampshire Laws of 1953, which the Supreme Court of New Hampshire has construed as set forth in questions 1 and 2, deprives appellant of liberty and property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States.

4. Whether Chapter 307, New Hampshire Laws of 1953, which the Supreme Court of New Hampshire has construed as set forth in questions 1 and 2, violates Article VI of the Constitution of the United States in that it purports to deal with matters within the exclusive power of the Federal Government, and with respect to which the Federal Government has already legislated to the exclusion of state legislation.

STATUTES INVOLVED

New Hampshire Laws of 1951, Chapter 193; New Hampshire Laws of 1953, Chapter 307. Both statutes are printed in Appendix B to this Statement.

STATEMENT OF THE CASE

Appellant, Paul M. Sweezy, is a resident of Wilton, New Hampshire, where he has lived in the summer since he was six years of age, and continuously since the end of World War II (R. 15). Dr. Sweezy is a graduate of Phillips Exeter Academy and Harvard University (R. 16). He studied at the London School of Economics and at the University of Vienna, and obtained a doctor's degree in economics from Harvard in 1937 (R. 16). From 1934 to 1942 Dr. Sweezy was a member of the Harvard faculty (R. 16). In 1942 he entered the armed forces, during most of the War being assigned to the Office of Strategic Services (R. 16). He left the Army as a Second Lieutenant (R. 17), receiving a Bronze Star for his service (Exhibit 7, not printed). Upon returning to civilian life, Dr. Sweezy was awarded a research scholarship by the Social Science Research Council (R. 17). Since the War, he has devoted himself to research, writing, and the publication of a monthly journal of opinion, *The Monthly Review* (R. 17, 32).

Dr. Sweezy is a distinguished economist and a well-known authority upon socialism, with a reputation for honesty and integrity in the academic profession (R. 141, 219-20). Among his published works are *The Theory of Capitalist Development* (1942), *Socialism*, published by McGraw-Hill in 1949, and, most recently, *The Present as History* (R. 27-8, 141). In political orientation he is a socialist and a Marxist (R. 33-4, 46, 67-8, 91). Beginning in 1952 he had been invited by the staff at the University of New Hampshire in charge of the Humanities Course to give a lecture each year to the students in that course on socialism (R. 58-60, 86-7). He also participated in class discussions at the University of New Hampshire on other occasions (R. 219).

In 1951 New Hampshire passed "The Subversive Activities Act of 1951" (N. H. Laws of 1951, Ch. 193, reprinted in Appen-

dix B, *infra*). Briefly, this statute set forth definitions of "subversive organization", "foreign subversive organization", and "subversive person;" it declared certain acts, utterances and participation in "subversive organizations" to be felonies, subject to imprisonment up to twenty years; it made the existence of "subversive organizations" unlawful and provided for their dissolution; and it made "subversive persons" ineligible for government employment and established a loyalty program to eliminate them from such employment. The definition of "subversive person" in the Act is as follows:

> " 'Subversive person' means any person who commits; attempts to commit, or aids in the commission; or advocates, abets, advises or teaches, by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force, or violence; or who is a member of a subversive organization or a foreign subversive organization" (Sec. 1).

Two years later, the New Hampshire legislature passed "Joint Resolution Relating to the Investigation of Subversive Activities" (N. H. Laws of 1953, Ch. 307, reprinted in Appendix B, *infra*). This resolution authorized and directed the Attorney General "to make full and complete investigation with respect to violations of the subversive activities act of 1951 and to determine whether subversive persons as defined in said act are presently located within this state." The Attorney General was directed to "report to the 1955 session . . . . the results of this investigation, together with his recommendations, if any, for necessary legislation." He was further authorized "to require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, and documents . . . . as

he deems advisable." The Attorney General was given no power to punish witnesses for refusal to answer questions or produce material; it was contemplated that enforcement of such requirements would be by application to the Superior Court under Revised Laws of New Hampshire (1942), Chapter 370, Sections 18 and 19 (now RSA 491, Sec. 19 and 20).[3]

Acting under the above joint resolution the Attorney General, by subpoena dated October 5, 1953, summoned appellant to appear and give testimony at a hearing set for January 8, 1954 (R. 3-4). On that date appellant appeared before the Attorney General and testified (R. 14-51). Appellant was not accompanied by counsel, his counsel being engaged on that day with another matter (R. 14-5). Appellant answered a number of questions propounded by the Attorney General, but declined to answer certain others, basing his refusal upon the ground that the questions were irrelevant and invaded his freedom under the First Amendment (see *infra*).

On April 30, 1954, the Supreme Court of New Hampshire rendered its decision in *Nelson* v. *Wyman*, 99 N. H. 33. This case involved another witness, called by the Attorney General in the course of his investigation, who had refused to answer certain questions. Upholding the constitutionality of the Investigation of Subversive Activities Act (Laws of 1953, Ch. 307) and, so far as applicable to the case, the Subversive Activities Act of 1951 (Laws of 1951, Ch. 193), and refusing the witness' request to be relieved of answering the questions propounded, the Supreme Court of New Hampshire specifically ruled:

(1) The definition of "subversive person", as used in the two statutes, included persons who were engaging in the specified acts "whether or not done 'knowingly and willfully'" (99 N. H. at

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[3]The Attorney General's authority was extended to June 30, 1957, by New Hampshire Laws of 1955, Chapters 197 and 340.

39), and persons who were "members of subversive organizations not knowing them to be such" (99 N. H., at 37).

(2) The Attorney General, when acting under the 1953 Act, was exercising the legislative power of investigation, delegated to him by the legislature (99 N. H. at 36-9). "His position as the chief law enforcement officer of the State did not transform the inquiry which was otherwise legislative into executive action" (99 N. H. at 38).

(3) The existence of Federal legislation dealing with subversive activity (the Court referred only to the Smith Act) "does not preclude state legislation on the same subject matter" (99 N. H. at 49). The Court expressly rejected the conclusion reached in *Commonwealth* v. *Nelson*, 377 Pa. 58, the decision recently affirmed by this Court in *Pennsylvania* v. *Nelson*, 350 U. S. 497.

On June 3, 1954, appellant was recalled by the Attorney General and, accompanied by counsel, was subjected to further questioning (R. 51-96).

During the course of the two hearings, appellant testified, in response to questions of the Attorney General, that he was not and never had been a member of the Communist Party (R. 18, 40, 96); that he had never attended any meetings of the Communist Party (R. 18, 40, 65); that he had never contributed to the Communist Party (R. 42-3); that he did not know any person in New Hampshire who was a member of the Communist Party (R. 17, 41, 42, 53); that he did not advocate or teach, and never had advocated or taught, overthrow of the government by force or violence (R. 20-1, 34); that he had not assisted any group which advocated the overthrow of the government by force or violence (R. 21), or known any person or group in New Hampshire who so advocated (R. 21); and that he did not know of any "subversive" activities or any "subversive persons" in New Hampshire, as defined by the New Hampshire statutes (R. 43, 51).

Appellant answered all questions with respect to his membership in and association with various organizations he was questioned about, other than the Progressive Citizens of America and the Progressive Party (R. 20-32, 72-82). He likewise fully responded to all questions as to whether named individuals were members of the Communist Party or "subversive persons" within the meaning of the New Hampshire statutes (R. 18, 54-5, 64-6, 77-8, 83-5; see also R. 10, 146), and to all questions with regard to Communist influence on organizations with which he had any connection, including the Progressive Party (R. 41, 76-7, 82-3).

The questions appellant refused to answer fall within three categories: (1) those relating to his lectures at the University of New Hampshire; (2) those relating to the activities of himself and others in the Progressive Citizens of America and the Progressive Party; and (3) those relating to opinion and belief.[4] Appellant's refusal to answer questions in the third group was upheld by the Superior Court (R. 203, 234), and in this appeal we are concerned only with the questions in the first two groups:

(1) With regard to the lectures, appellant testified that he had, at the invitation of the faculty members conducting the Humanities Course at the University of New Hampshire, delivered a lecture in that course for the past three years (R. 58-60); that in addition he had attended other sessions of the Humanities Course during the same period and participated in class discussion (R. 86-7); that neither in his lectures nor at any other time did he "advocate or in any way further the aim of overthrowing constitutional government by force and violence" (R. 58-9, 88); and that he did not "advocate Communism" in his lectures (R. 88). Appellant refused to answer questions, specifically upon First Amendment grounds, in which the Attorney General inquired as

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[4]Actually appellant answered a number of questions dealing with opinion and belief, though still maintaining his right to refuse to do so.

to the subject of the lectures (R. 59, 66-7, 88-90); whether appellant had told the class that Socialism was inevitable in this country (R. 66, 88); whether appellant had advocated Marxism in the lectures (R. 88); and whether he had espoused the theory of dialectical materialism in his lectures (R. 88).

(2) With regard to the Progressive Party and the Progressive Citizens of America (the forerunner of the Progressive Party, R. 53), appellant testified that he did not know of any Communists in the Progressive Party (R. 82-3, 41); that to his knowledge the Progressive Party was not manipulated by Communists (R. 82); and that he had no knowledge of any connection between the Communist Party and the Progressive Party or of any influence exercised by the Communist Party or by Communists over the Progressive Party (R. 41; see also R. 30). There was no showing that the Progressive Party or the Progressive Citizens of America had ever used or advocated force or violence to overthrow the government, that said organizations were "subversive organizations" within the meaning of the New Hampshire statutes, or that said organizations were otherwise unlawful (see R. 10, 82, 146, 189; Appendix A, *infra* p. 43).[5]

Appellant refused to answer, specifically on First Amendment grounds (R. 29, 51; see also R. 57), most other questions relating to the Progressive Party and the Progressive Citizens of America (R. 29-31, 40-2, 52-7, 82-5). These included questions as to whether Nancy Sweezy, appellant's wife, was active in the formation of the Progressive Citizens of America (R. 52); whether Charles Beebe was active in the Progressive Citizens of America

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[5] The Attorney General stated in argument before the Superior Court that he had information in his possession showing that five or more members of the Progressive Party, including some of its candidates for election, were or had been members of the Communist Party (R. 189). But even this information was never produced in the Sweezy hearing or before the courts (see R. 202, lines 41-3).

and in the Progressive Party (R. 53, 83); and whether appellant's visit to Abraham Walenko had anything to do with the Progressive Party (R. 56-7).

Following the hearings the Attorney General, on June 11, 1954, filed a petition with the Superior Court setting forth certain questions appellant had refused to answer and praying that these questions be propounded to appellant by the Court (R. 3-9). The Superior Court, after hearing argument, ruled that appellant must answer the questions relating to his lectures at the University of New Hampshire and to the Progressive Party and the Progressive Citizens of America, but not those relating to opinion and belief (R. 202-3). Appellant was then called as a witness and the Attorney General repeated the questions, to the extent allowed under the Court's ruling (R. 225-30). Appellant persisted in his refusal to answer and the Superior Court thereupon ordered that appellant be "found and adjudged in contempt of this Court" and "committed to the County Jail and there remain until purged of contempt" (R. 230). Appellant was then admitted to bail (R. 234).

The questions upon which the Court's order was based are set forth in Appendix C to this Statement and are the questions now in issue. In essence they are the same as those referred to above in connection with the hearings before the Attorney General.[6]

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[6]The only question involved in the contempt charges which is not mentioned above was the question whether Nancy Sweezy was working with individuals who were members of the Communist Party during the formation of the Progressive Citizens of America (R. 226). This question was originally the second half of a double question asked by the Attorney General, "Was she [Nancy Sweezy] active in the formation of the Progressive Citizens of America, working with individuals who were then members of the Communist Party" (R. 52). Appellant refused to answer. But immediately afterwards, when asked only the second part of the question, appellant did answer, saying he did

Upon appeal the Supreme Court of New Hampshire affirmed the order of the Superior Court, holding that the questions at issue were relevant to the Attorney General's investigation and were not precluded by the First and Fourteenth Amendments of the United States Constitution or by the due process clause of the Fourteenth Amendment (*infra*, Appendix A).

The Federal questions presented by this appeal were raised and preserved in the following manner:

(1) The First Amendment issue, both as to questions dealing with the lectures at the University of New Hampshire and the questions dealing with the Progressive Party and the Progressive Citizens of America, was raised expressly by appellant as a ground for refusing to answer before the Attorney General (R. 29, 51, 57, 59, 67, 90). The issues were likewise expressly raised before the Superior Court in appellant's answer to the Attorney General's petition (R. 12-3), in argument of counsel for appellant before the Court (R. 148-53), and at the time the questions were again propounded to appellant in the Superior Court (R. 226-30). The Superior Court overruled these objections (R. 204, 234).

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not know any Communist Party members in New Hampshire (R. 53). This was consistent with appellant's position throughout the Attorney General's hearings in answering questions about the Communist Party, but not about the Progressive Citizens of America or the Progressive Party except in relation to the Communist Party. Before the Superior Court the original question was broken down into two parts (R. 226). However, the inclusion of the second part as being an unanswered question seems to have been an oversight, since it had already been answered. In any event appellant is ready to repeat his answer to the second part if the Attorney General so desires.

The First Amendment issues were thereafter raised in briefs and argument before the New Hampshire Supreme Court.[7] And that Court expressly passed on these issues, saying in its opinion:

> "The right to lecture and the right to associate with others for a common purpose, be it political or otherwise, are individual liberties guaranteed to every citizen by the State and Federal Constitutions but are not absolute rights. 29 Ind. L. J. 162, 167. The inquiries authorized by the Legislature in connection with this investigation concerning the contents of the lectures and the membership, purposes and activities of the Progressive Party undoubtedly interfered with the defendant's free exercise of those liberties . . . Any stultifying effect which the investigation may have upon freedom of expression or any restriction which it may impose upon freedom of association will be in the limited area in which the legislative committee may reasonably believe that the overthrow of existing government by force and violence is being or has been taught, advocated or planned, an area in which the interest of the State justifies this intrusion upon civil liberties. The inquiries which the defendant was directed to answer in this case came within this area." Appendix A, *infra* pp. 46-7.

(2) The Fourteenth Amendment due process issue was first raised by appellant in his brief before the New Hampshire Supreme Court. Appellant argued that, "while due process cannot be defined with precision, and each case must stand on its own facts (*Fitzgibbons* v. *Hancock*, 97 N. H. 162, 164), procedural regularity requires that the 1951 and 1953 Acts as construed and applied be held unconstitutional, since they leave room for the

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[7] Appellant's Bill of Exceptions took a general exception to the rulings of the Superior Court, not referring specifically to constitutional issues (R. 1-3). Under New Hampshire practice the failure to mention specific constitutional objections in the Bill of Exceptions did not preclude appellant from raising any such issues in the New Hampshire Supreme Court. See, *e.g.*, the procedure with reference to the due process issue, *infra*.

play and action of purely personal and arbitrary power." The Supreme Court of New Hampshire expressly ruled on the due process issue in its opinion, saying:

> "The resolution authorizing the investigation is not so vague and lacking in standards as to violate the defendant's right to due process. . . . The sections of the act to which reference is made [the 1951 Act], and with which the circumstances of this case are concerned, define subversive organizations and persons (RSA: 555, 1) and the acts of advocacy and teaching (*Id.* 2(b)) and participation in a subversive organization (*Id.* 2(d)) which are made criminal with sufficient clarity to satisfy the requirements of due process. *Nelson* v. *Wyman*, 99 N. H. 33." Appendix A, *infra* p. 45.

(3) The issue with respect to whether the State of New Hampshire is precluded by the existence of Federal power and statutes from legislating or investigating in the area of sedition was not raised until the second motion for rehearing, which was denied without opinion. While this state of the record would normally preclude consideration of the issue by this Court, it is submitted that special circumstances warrant bringing this case within the exceptions to the usual rule.

Prior to the second hearing before the Attorney General (the first at which appellant was represented by counsel) the Supreme Court of New Hampshire decided *Nelson* v. *Wyman*, 99 N. H. 33, referred to above. This case, arising out of the same investigation being conducted by the Attorney General but involving another witness, squarely ruled against the contention that the invesigation was precluded by Federal occupancy of the field of sedition. 99 N. H. at 48-9. The issue was thus settled adversely to appellant by the highest court of the State, and counsel for appellant did not raise it again in the Superior Court.

After the Supreme Court of New Hampshire had decided the instant case, and after it had denied the first motion for rehearing,

this Court decided *Pennsylvania* v. *Nelson*, 350 U. S. 497. The decision in the Pennsylvania *Nelson* case for the first time opened the possibility that the New Hampshire Supreme Court would revise or reconsider its position in the New Hampshire *Nelson* case. Counsel for appellant immediately filed a second motion for rehearing based solely on this Court's decision in the Pennsylvania *Nelson* case. Appendix A, *infra*. This second motion conformed to the New Hampshire practice for presenting an issue of this nature under the circumstances involved. As indicated previously, it was not necessary for appellant to state specific constitutional objections in his Bill of Exceptions in order to have them considered by the New Hampshire Supreme Court; the due process issue was raised for the first time in appellant's brief in the Supreme Court and was passed upon by that Court. While the only specific rule of the New Hampshire Supreme Court provided that a motion for rehearing be filed within ten days of the original order (Rule 10, printed in 97 N. H. at 613), the case was still before the Supreme Court and a second motion for rehearing was an appropriate method of calling the Court's attention to the new issue brought into the case by this Court's decision in *Pennsylvania* v. *Nelson*.[8]

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[8]The New Hampshire Supreme Court has always been extremely liberal in considering the merits of an issue rather than timing or the form of procedure. Thus in *Ashuelot R. R. Co.* v. *Elliot*, 58 N. H. 451, the Court entertained and passed upon a motion for rehearing involving a constitutional issue that it had decided several years before. In *State* v. *Rheaume*, 80 N. H. 319, the Court stated the principle that "the constitutionality of a statute authorizing a prosecution involving the punishment for crime may be questioned at any stage of the proceedings" (80 N. H. at 322). And in *Duncan* v. *Jaffrey*, 98 N. H. 305, where the plaintiff sought to raise a constitutional issue as to the validity of a state tax but brought the wrong form of proceeding, the Court nevertheless proceeded to a decision on the merits. See also *Stebbins* v. *The Lancaster Ins. Co.*, 59 N. H. 143; *Tirrell* v. *Johnson*, 86 N. H. 530.

Furthermore, the position of the New Hampshire Supreme Court on the question whether Federal occupancy of the field precludes the Attorney General's investigation is not in doubt. Subsequent to the denial of appellant's second motion for rehearing, the Supreme Court passed expressly on the issue in *Kahn* v. *Wyman* (decided June 8, 1956, reprinted in Appendix D). In that case a third witness called by the Attorney General in the course of his investigation filed a petition in the Superior Court to quash the subpoena, basing his motion on *Pennsylvania* v. *Nelson*. The New Hampshire Supreme Court, in a *per curiam* opinion, upheld the lower court's dismissal of this petition, saying:

> "In the present case, however, the issue is whether or not the *Nelson* case precludes the Legislature of the state from conducting investigations of subversive activities within the state as distinct from providing for the prosecution of crimes. While it is not clear what a state legislative investigation of subversive activities may accomplish at the present time, we are not satisfied that the *Nelson* case, *supra*, purports to preclude such an investigation. If state investigation of subversive activities is to be prohibited, a declaration to that effect must come from higher authority than this court. We know of no decision of any court which has ruled that the investigative aspects of state subversive activities legislation have been preempted by the federal government. We therefore conclude that the Trial Court was correct in dismissing this petition."

Thus the situation is that the New Hampshire Supreme Court decided the issue against appellant in a related case; appellant raised the issue at the first moment there was any possibility of a different resolution; the New Hampshire Supreme Court denied relief; and the position of the New Hampshire Supreme Court—overruling the objection and in effect putting the issue up to this Court—is entirely clear from the *Kahn* decision. Under the circumstances we submit that the issue should be considered by this Court. See *Great Northern R. Co.* v. *Sunburst Oil Co.*, 287

U. S. 338, 366-7; *Missouri ex rel Missouri Ins. Co.* v. *Gehner*, 281 U. S. 313, 320; *Brinkerhoff-Faris Trust Co.* v. *Hill*, 281 U. S. 673, 677-8.[9]

THE QUESTIONS ARE SUBSTANTIAL

The questions presented by this appeal raise fundamental constitutional issues with respect to the power of state legislative committees to investigate in the field of political activity and opinion. The problems involved are of an equal or greater magnitude than those considered by this Court on appeal in cases involving state loyalty programs, *e.g.*, *Adler* v. *Board of Education*, 342 U. S. 485; *Wieman* v. *Updegraff*, 344 U. S. 183; or by appeal or certiorari in cases involving other restrictions upon freedom of expression in the post war period, *e.g.*, *U. S.* v. *Rumely*, 345 U. S. 41; *Quinn* v. *U. S.*, 349 U. S. 155; *Pennsylvania* v. *Nelson*, 350 U. S. 497; *Slochower* v. *Board of Higher Education*, 350 U. S. 551. The issues here raised have not previously been considered by this Court (*cf. Tenney* v. *Brandhove*, 341 U. S. 367).

As to all questions here presented the Supreme Court of New Hampshire upheld the state statutes against serious claims that they were repugnant to certain provisions of the United States Constitution. The validity of each of these claims, and the substantial nature of the issues raised, are considered seriatim below.

1. Whether Compelling Appellant to Answer Questions Concerning his Lectures Contravened the First and Fourteenth Amendments.

The effort to force appellant to answer questions concerning the contents of his lectures at the University of New Hampshire

[9] It should be noted that the issue is clearly before the Court, in a somewhat different aspect, in connection with the First Amendment issues (*infra* pp. 21-3).

raises squarely the issue of freedom of speech in one of its most significant and sensitive aspects,—the area of academic freedom. In essence the attempt of the New Hampshire legislature, acting through its agent the Attorney General, was to bring the potent sanctions of the state investigatory power to bear in curtailing and repressing academic discussion of Marxist and socialist theory. Such conduct on the part of a state government runs directly counter to the principles of free discussion which underlie our democratic form of government and which are embodied in the First and Fourteenth Amendments as consistently interpreted by the decisions of this Court.

It is unnecessary at this point in our history to emphasize the destructive effect of an unchecked power of legislative inquiry upon freedom of political expression. The power to call persons before an official investigating body, to subject them to the burdens and strains of justifying their political ideas or conduct before experienced and hostile interrogators, and to expose them to the impact of an aroused public opinion, furnishes the modern legislative committee with sanctions of unparalleled effectiveness in curtailing political activities, associations and opinion. Indeed, in this very case the Supreme Court of New Hampshire, referring to appellant's rights of speech and association, acknowledged that the inquiries made "undoubtedly interfered with [appellant's] free exercise of those liberties" (Appendix A, *infra* p. 46).

It is therefore clear that the power of legislative investigation, fully as much as the power of legislative enactment, must at some point be checked by the countervailing command of the First Amendment. This Court has, even in the days before the full implications of the legislative power to inquire had become manifest, consistently taken the position that the power is subject to limitation. *Kilbourn* v. *Thompson*, 103 U. S. 168, 190, 194-5; *McGrain* v. *Daugherty*, 273 U. S. 135, 173-4; *Sinclair* v. *U. S.*,

279 U. S. 263, 292. And recently the Court has made this position entirely plain. In *U. S.* v. *Rumely*, 345 U. S. 41, the Court expressly recognized that the First Amendment constituted a limitation upon legislative powers to investigate, although it abstained "from marking the boundaries of congressional power or delimiting the protection guaranteed by the First Amendment" (345 U. S. at 48). And in *Quinn* v. *U. S.*, 349 U. S. 155, the Court took occasion to point out:

> "But the power to investigate, broad as it may be, is also subject to recognized limitations. It cannot be used to inquire into private affairs unrelated to a valid legislative purpose. Nor does it extend to an area in which Congress is forbidden to legislate. . . . Still further limitations on the power to investigate are found in the specific individual guarantees of the Bill of Rights . . ." 349 U. S. at 161, footnotes omitted.

It is true that these cases involved Federal rather than state power of legislative inquiry. But it can hardly be doubted that the requirements of the First Amendment, made applicable to the states through the Fourteenth Amendment, impose comparable or identical limits on state power.

The point at which the First Amendment comes into play as limitation upon legislative investigating authority has not been clearly marked out. But wherever that line may eventually be drawn, we submit that the Attorney General of New Hampshire has overstepped it in this case.

The most common statement of the limiting principle is that the legislative investigating power may not be carried into areas where the government concerned has no power to legislate. *Quinn* v. *U. S.*, *supra*. This principle excludes areas where legislation would be forbidden by the First Amendment. The questions propounded by the Attorney General with respect to appellant's lectures clearly embrace a field where the First Amendment

prohibits legislation, and therefore must be held to contravene that constitutional guarantee.

No one questions the power of a state legislature, subject to overriding Federal power, to enact legislation prohibiting the use of force or violence to overthrow, destroy or alter constitutional forms of government. We may assume further that, at least under the conditions described in *Dennis* v. *U. S.*, 341 U. S. 494, a state may proscribe the advocacy of force or violence for such purposes, whether by individuals or by organizations. Into these areas the legislative power of inquiry, under the area test, extends. But the state clearly has no power, by reason of the First and Fourteenth Amendments, to prohibit or unduly burden political activity or expression which is directed toward political or social change through peaceful democratic methods. *Stromberg* v. *California*, 283 U. S. 359; *DeJonge* v. *Oregon*, 299 U. S. 353; *Taylor* v. *Mississippi*, 319 U. S. 583, *Terminiello* v. *Chicago*, 337 U. S. 1. Nor has it any power to prevent academic discussion of political and social issues, even where the discussion may relate to doctrines of force and violence. *Dennis* v. *U. S.*, 341 U. S. 494, 501-2. From these sectors the state's investigating power, with its enormous capacity for restraint and suppression, is excluded.

Yet it is precisely these forbidden areas that the Attorney General of New Hampshire seeks to enter in pressing for an answer to the questions here at issue. Appellant answered all questions relating to the use or advocacy of force or violence. Appellant also answered all questions in the borderline area of Communist Party membership, activity and advocacy, in deference to the legislative finding in the 1951 Act that the Communist Party advocated force and violence. These issues having been eliminated and disposed of, the Attorney General proceeded to inquire into the area of peaceful change and academic discussion,—what the other contents of the lectures were, whether appellant had stated that socialism was inevitable, whether he had

advocated Marxism, whether he had espoused the theory of dialectical materialism. At this point the inquiry transgressed the bounds of legitimate state power and appellant was justified in invoking the First and Fourteenth Amendments.

It is no answer to say, as the Attorney General and the Supreme Court of New Hampshire appear to contend, that appellant's writings and association with certain groups listed by the Committee on Un-American Activities or the Attorney General of the United States, justify an inquiry into the dicussions here in issue. Surely no one would assert that such expression of opinion or association can deprive appellant of his right to express his views in accordance with democratic procedures or can deprive his hearers of the right to listen to such discussion. See *DeJonge* v. *Oregon*, 299 U. S. 353, and other cases cited *supra*.

Nor is it an answer to say, as the Attorney General and the Supreme Court of New Hampshire also argue, that appellant's replies to the questions propounded might have some tendency to indicate an endorsement of the principles of force and violence. The questions dealing directly with force and violence were answered. So far as the legitimate interest of the State of New Hampshire was concerned its power ended at that point. To permit inquiry into fields foreclosed by the First Amendment on the chance that it might turn up some information bearing on force and violence would undermine the whole principle of encouraging full and free expression of ideas. The deterrent powers of legislative investigation are so powerful, the need to protect the right of free expression so vital, and the interest of the state so remote that no such drastic impairment of the First Amendment can be sanctioned.

There is another reason why the First and Fourteenth Amendments prevent the State of New Hampshire from carrying its investigation into the area here involved. Such inquiry, as we have seen, seriously infringes freedom of expression. It can be

justified, if at all, only if the state has a substantial legislative interest in the field of inquiry. If such interest is insubstantial or non-existent it clearly cannot outweigh or prevail against the protection afforded by the First and Fourteenth Amendments. See *U. S. v. Rumely*, 345 U. S. at 44, 46.

In this case the State of New Hampshire has no such legislative interest to interpose as a counterbalance to the principles of the First Amendment. Both the 1951 and the 1953 statutes dealt with the problem of sedition directed against the country as a whole. It was this problem also with which the Attorney General was specifically concerned in the investigation of appellant. Under the recent ruling of this Court in *Pennsylvania v. Nelson*, 350 U. S. 497, the field of national sedition is one foreclosed to state legislative action. Consequently the problem of accommodating "contending principles", as Mr. Justice Frankfurter expressed it in the *Rumely* case, disappears. The First Amendment remains as the single applicable principle and its mandate must prevail.[10]

A second standard often used in delineating the application of the First Amendment is the clear and present danger test. Under this test state legislative action which impinges upon First Amendment rights can be justified only where the conduct involved takes place under such circumstances as to present a clear and present danger of a substantive evil the government has a right to prevent. *Schenck v. U. S.*, 249 U. S. 47; *Dennis v. U. S.*, 341 U. S. 494. We submit that the action of the Attorney General of New Hampshire in this case fails to meet this standard also.

The object of the New Hampshire legislature in enacting the 1951 and 1953 laws was to meet the danger of overthrow of the government by force and violence. The Attorney General's investigation was directed toward securing information to assist the

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[10]For a more detailed discussion of the preclusion issue see *infra*.

state in enacting legislation to meet this danger. But surely no one can contend that appellant's lectures in the classrooms at the University of New Hampshire by any stretch of the imagination presented any danger—clear, present or probable—of the overthrow of the government by force and violence.

Nor can it be argued that the state of New Hampshire has a right to inquire into the contents of appellant's lectures in order to determine whether or not a clear and present danger existed. Appellant having answered questions concerning advocacy of force and violence and advocacy of "Communism," any further inquiry was far too peripheral to establish any clear and present danger of overthrow of the government. Again, to permit inquiry into such matters, on the pretext of investigating whether a clear and present danger of overthrow existed, would remove all limits to the power of legislative investigation and reduce the great principles of the First Amendment to sheer formality.

Finally, the action of the Attorney General in propounding these questions cannot be sustained on any other standard for applying the First Amendment. It was plainly not necessary for the preservation of the democratic process in the United States or in New Hampshire. On the contrary, it constituted a grave infringement of democratic principles of free expression by imposing harassments upon peaceful and academic discussion of one of the major issues of our time. *A fortiori*, any more absolute standard of interpretation of the First Amendment would preclude the Attorney General's questions.

It should be emphasized that the issue here does not concern the extent of control which a state legislature may exercise over the curriculum of a state university or the qualifications for teachers at such a university.[11] Appellant was not a member of

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[11]Cf. *Scopes* v. *State*, 154 Tenn. 105, 289 S. W. 363; *Meyer* v. *Nebraska*, 262 U. S. 390; *Pierce* v. *Society of Sisters*, 268 U. S. 510; *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624.

the faculty of the University of New Hampshire, nor a state employee. Except so far as the 1953 Act dealt with the loyalty of state employees generally, it did not purport to deal with these problems. Nor did the Attorney General or the Supreme Court of New Hampshire consider the case to involve such issues. The authority of the Attorney General was to search for violations of the 1951 Act and to discover whether there were any "subversive persons" in the state. He had no power, and did not undertake to exercise any, to inquire into the curriculum of the University or the manner of teaching. And his actions gravely affected freedom of speech not only in the Humanities Course but upon the campus and throughout the state.

For these reasons we submit the decision of the New Hampshire Supreme Court is in error and should be reviewed by this Court. The question is one of the most vital facing the nation today. Socialism and Marxism in all their many variants and shadings, whatever their merits, represent some of the most significant intellectual forces of our time. Americans must strive to study and understand them. It is impossible to study a set of doctrines without knowing what those who believe in their validity, and hence in a real sense advocate and teach them, understand them to mean and imply. If the investigating process can be used to make it difficult or impossible for adherents to expound these doctrines and for students and others to have them expounded, as happened in this case, then the whole public purpose of the First Amendment is defeated.

2. Whether Compelling Appellant to Answer Questions Concerning the Progressive Party and the Progressive Citizens of America Contravened the First and Fourteenth Amendments.

The attempt to force appellant to answer questions concerning the Progressive Party and the Progressive Citizens of America

presents issues very similar to those just discussed. The area involved is another vital one in the democratic process,—the right of association for political expression and action. In this field, also, the power of legislative investigation to hamper, restrict and destroy can be overwhelming, especially where an unpopular political minority is under attack. Here also, we submit, regardless of how the line of First Amendment protection may be drawn, the Attorney General of New Hampshire has transgressed constitutional bounds.

The most elemental principles of the democratic process, as embodied in the First and Fourteenth Amendments, require the government to keep its hands off the formation and operation of political organizations, except in certain narrow and specifically defined areas. The state may, subject again to overriding Federal power, prevent the use of force or violence by political organizations and, we may assume, the advocacy of force or violence under conditions of clear and present danger. *Dennis* v. *U. S.*, 341 U. S. 494. It may also regulate political associations in certain respects not relevant here, such as with respect to election practices, direct lobbying, participation by government employees, and the like. But it may not interfere with the normal political process of forming or maintaining political organizations which advocate particular points of view or work for particular economic, social or political change by peaceful and legitimate methods.

Yet this is exactly what the State of New Hampshire has attempted to do in this case through use of the legislative investigating power. So far as appears from this record, the Progressive Party and the Progressive Citizens of America were lawful political organizations. Appellant answered all questions with regard to his activities in these organizations and his knowledge of their activities, so far as the use or advocacy of force and violence was concerned. There was no evidence in the record or claimed to be in the possession of the Attorney General that either

of them had ever employed force or violence or advocated its use. Appellant also answered all questions concerning the presence of Communist Party members in the two organizations and concerning Communist influence or manipulation of any kind.[12] The remaining questions, to which the Attorney General now seeks an answer, thus related only to the peaceful and legitimate activities of political organizations not shown to have engaged in any illegal activity. And the persons the Attorney General inquired about—appellant's wife and two others—were not shown to be or claimed to be Communist Party members or "subversive persons." Hence the questions here at issue embraced an area plainly beyond the power of legislative action and equally beyond the scope of legislative inquiry.

The Attorney General and the Supreme Court of New Hampshire have attempted to justify the inquiry into areas beyond the control of state legislative power upon the ground that the Attorney General was entitled to know what persons were active in the Progressive Party because he might have other information that such persons were Communist Party members or "subversive persons," and that the information sought would therefore have a bearing upon whether the Progressive Party was a "subversive organization." The argument, in effect, asserts a right to carry the legislative process of investigation, with all its sanctions, deep into every corner of a political party's activity, on the ground that some members of that party might also be members of the Communist Party. Moreover, the fact is that the Attorney General did not claim, and there was no showing, that the persons inquired about were Communist Party members or "subversive persons." Some of the questions related to the activities of the Progressive Citizens of America, which had gone out of existence in 1948,

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[12]As pointed out above, the question whether appellant's wife, Nancy Sweezy, had worked with Communists in the formation of the Progressive Citizens of America was also answered by appellant in his testimony before the Attorney General, though not before the Superior Court.

three years before enactment of the 1951 Act. Another question was not even directed to the issue whether the person involved (Abraham Walenko) was a member of the Progressive Party. Under the circumstances such a remote and speculative relevancy is not sufficient to overcome the clear mandate of the First Amendment that normal political activities must be free of government interference or restraint. Any other rule would, as noted previously, effectively open up virtually all political activity to the destructive impact of legislative investigation.

As to these questions, also, for reasons set forth above, the State of New Hampshire was operating in an area precluded by Federal power and hence the legislative interest involved was insufficient to overcome the protection afforded by the principles embodied in the First and Fourteenth Amendments.

Nor can the action of the Attorney General be justified on other theories of First Amendment limitation. Absent any showing of the use or advocacy of force or violence by the Progressive Party or the Progressive Citizens of America, no likelihood of a clear and present danger of overthrow of the government by force or violence appears. Nor can one say that the repression of legitimate activities of political organizations in the fashion that here occurred is essential to or consistent with the preservation of the democratic process.

We submit, therefore, that the constitutional issue presented is a substantial one, with crucial implications for the right of political association, and merits full consideration by this Court on appeal.

3. Whether Compelling Appellant to Answer Questions Concerning his Lectures and Concerning the Progressive Party and the Progressive Citizens of America Violated the Due Process Clause of the Fourteenth Amendment.

The power of the Attorney General of New Hampshire to conduct a legislative investigation under the 1953 Act, clearly

depended upon the validity of the 1951 Act. The Attorney General's authority was limited to an "investigation with respect to violations of the subversive activities act of 1951 and to determine whether subversive persons as defined in said act are presently located within this state." To the extent that the 1951 Act failed to meet the constitutional requirements of due process, the Attorney General's power of investigation to the same extent failed. The Supreme Court of New Hampshire recognized this fact both in its opinion in *Nelson* v. *Wyman* and in its opinion in this case (see 99 N. H. at 46-50; Appendix A, *infra* pp. 45-6).

We submit that the 1951 Act is fatally defective in material parts because its commands are stated in vague and uncertain language which makes it difficult or impossible for those subject to its terms to ascertain its meaning and which permits its application to situations not properly within the scope of state power.

The definition of "subversive person"—the key provision of the Act—includes "any person who commits, attempts to commit, or *aids* in the commission, or advocates, abets, advises or *teaches by any means* any person to commit, attempt to commit, or *aid* in the commission of any act *intended* to overthrow, destroy or alter, or to *assist* in the overthrow, destruction or alteration of" the constitutional form of government by force or violence (Sec. 1; italics supplied). It also includes any person "who is a member of a subversive organization or a foreign subversive organization" (*ibid.*). This definition, as pointed out above, has been interpreted by the New Hampshire Supreme Court to include persons engaged in the specified conduct "whether or not done 'knowingly and willfully'" (99 N. H. at 39) and persons who were "members of subversive organizations not knowing them to be such" (99 N. H. at 37; see also Appendix A, *infra* pp. 41, 43).

The result is that a person engaging in political activities in New Hampshire finds it impossible to know when some action

of his, not knowingly or willfully undertaken, will be construed to "aid" in the commission of an act "intended" to "assist" in the overthrow of the government by force or violence. Similarly, he would not know when a speech or pamphlet of his, without his knowing or willing it, may be held to "teach" a person to "aid" in the commission of an act "intended" to "assist" in the overthrow of the government. Nor does he know what association of his with a political group will be taken as bringing him within the definition of "subversive person" entirely apart from his knowledge of the purposes or objectives of the organization. Under these circumstances no person could be sure that wholly innocent and well-intentioned conduct on his part would not bring him within the definition of "subversive person" and subject him to investigation and exposure by the Attorney General.

Such uncertainty plainly fails to meet the requirements of due process that legislation must be framed in sufficiently clear terms to permit those subject to it to know "where this new standard of guilt would draw the line between the allowable and the forbidden . . ." *Winters* v. *N. Y.*, 333 U. S. 507, 519. See also *Lanzetta* v. *N. J.*, 306 U. S. 451; *Musser* v. *Utah*, 333 U. S. 95; *Connally* v. *General Construction Co.*, 296 U. S. 385.

That this uncertainty permeated the entire investigation of appellant is clear from the range of questions addressed to appellant by the Attorney General and his staff assistant, Mr. Conner. Among them were:

> Mr. WYMAN. Have you advocated and taken action designed to aid the replacement of the free enterprise economic system of the United States with some other form? R. 33.

> Mr. WYMAN. Do you advocate now, today, that the Government of the United States or of the various states inquire into alleged subversion in this country purposing to establish either a Nazi or Fascist dictatorship in this country? R. 38.

Mr. CONNER. In the "Monthly Review" have you yourself taken the position that the only kind of a settlement which would really solve the German problem would be unification of the Country coupled with the kind of structural reforms which have been already instituted in the Soviet Zone? R. 46.

Attorney General WYMAN. Did you carry physically into the lecture hall or room, as the case may be, anything in the nature of printed materials in assistance of your lecture?

The WITNESS. I had my brief case with me.

Attorney General WYMAN. Do you have any memory of what was in that brief case in connection with printed materials? R. 60.

Attorney General WYMAN. In what respects is the dialectically materialistic aspect of the evolution of society consistent with belief in God? R. 88.

Attorney General WYMAN. And in this Socialist economy that you advocate, that you support, who would own the means of production? R. 91.

The same uncertainty as to whether there is any stopping place in the search for "subversive persons" appears in the Attorney General's petition and argument to the Superior Court (see, *e.g.*, R. 8, L. 19 ff; R. 101, L. 35 ff; R. 104, L. 34 ff; R. 111, L. 19 ff; R. 155, L. 30 ff). And it is perhaps not without significance that in the view of Mr. Conner, the Attorney General's assistant, the scope of the investigation included taking down the license plate numbers of person's attending the Superior Court session (R. 224-5).

Moreover, and equally important, the breadth of the statute (and the investigation under it) carries its restrictions into areas that due process of law does not permit to a state. This Court has

expressly ruled that a state requirement for loyalty of government employees, which imposes disqualification for innocent membership in subversive organizations, violates due process of law. *Wieman* v. *Updegraff*, 344 U. S. 183. The legislation here involved has been interpreted by the New Hampshire Supreme Court to do precisely what this Court outlawed in the *Updegraff* case. The fact that this legislation imposes sanctions through legislative investigation rather than through deprivation of government employment, does not change the principle. In fact, the arbitrary exercise of the power of legislative inquiry may be even more destructive of individual rights than a similar exercise of power over eligibility for government employment. In either case, "Indiscriminate classification of innocent with knowing activity must fall as an assertion of arbitrary power" (344 U. S. at 191).

4. Whether New Hampshire Laws of 1951 and 1953 are Invalid by Reason of Federal Occupancy of the Field.

In *Pennsylvania* v. *Nelson*, 350 U. S. 497, this Court held the Pennsylvania Sedition Act invalid on the ground that existing Federal legislation in the field of sedition precluded state legislation on the same subject. That decision is controlling here.

Under the *Nelson* doctrine those provisions of the 1951 Act which deal with sedition (Sec. 2 to 8, incl.) are clearly superseded by Federal legislation so far as concerns sedition, or alleged sedition, affecting the country as a whole. Those provisions of the Act which establish a loyalty program for state employees and candidates for state office (Sec. 9 to 14, incl.) are presumably unaffected by the *Nelson* case.[13] Since the 1953 Act is valid only to the extent that the 1951 Act is valid *(supra)*, the only remaining issue is whether the questions which appellant refused to

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[13]The remaining sections—Sec. 1, 15, 16 and 17—are applicable to both halves of the Act.

answer were premised upon power derived from the valid or invalid portions of the two statutes.

The answer to this would not seem in doubt. None of the questions propounded to appellant related to the loyalty program for state employees or candidates for state office. All concerned issues of alleged sedition aimed at the entire nation, of the same nature as those involved in the Pennsylvania case. The *Nelson* decision is therefore controlling, and the effort by the State of New Hampshire to enter this field is beyond its power and hence is invalid.

The same result follows whether or not it be held that the validity of the 1953 Act depended upon the validity of the 1951 Act. Even if the 1953 Act be construed as an independent delegation of authority to investigate subversive acts and persons, without reference to the 1951 Act, any such attempted exercise of state power to investigate must fail under the *Nelson* doctrine. In the first place, such an investigation would serve no legislative purpose, since legislation would be precluded. And secondly, the impact of the legislative investigating power is different only in form, not in substance, from the impact of state regulatory power. The reasons that preclude a state from legislating in the field of sedition affecting the whole country render equally invalid an attempt to investigate in that area.

CONCLUSION

The issues here go to the heart of the democratic process in America. At no time in our history has it been more important to keep open the channels of public discussion concerning the vital and troublesome questions which face the people of our nation in these difficult times. The power of legislative inquiry has been used here to block public discussion at two crucial points,—in the academic community where new ideas and plans must be gen-

erated and developed, and in the arena of political organization where policy decisions must be formulated and carried into action. No legitimate interest of the state justifies the suppresion of free expression suc' as was attempted in this case. The questions presented are substantial and important and merit the fullest consideration by this Court.

Respectfully submitted,

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June, 1956

APPENDIX A

Opinion of Supreme Court of New Hampshire

LOUIS C. WYMAN, *Attorney General*

v.

PAUL M. SWEEZY.

Argued January 3, 1956.

Decided March 6, 1956.

PETITION, under R. L. *c.* 370, *ss.* 18 and 19 (Now RSA 491: 19, 20) brought by the Attorney General seeking an order compelling a witness to answer certain questions which he had refused to answer during the course of an investigation of subversive activities conducted by the Attorney General pursuant to a joint resolution of the Senate and House of Representatives. Laws 1953, *c.* 307. See Laws 1955, *c.* 197.

During his testimony before the Attorney General, the witness stated that he has never been a member of the Communist Party and the Attorney General makes no claim to the contrary. The witness did not invoke the Fifth Amendment of the Federal Constitution or the Fifteenth Amendment of the New Hampshire Constitution as a basis for his refusal to answer certain questions but specifically disavowed any reliance upon them.

At the hearing on the petition to the Superior Court, the transcript of two hearings conducted by the Attorney General at which the defendant was questioned, as well as the exhibits introduced at these hearings, were made a part of the record. On the basis of these transcripts and exhibits as well as the briefs and arguments of counsel, the Trial Court ruled as to the relevancy of the questions propounded to the defendant by the Attorney General to which answers had been refused.

As to "inquiries which related to opinion and beliefs, and answers to hypothetical questions," the Court ruled that these were not relevant. Other questions were deemed to be relevant and the defendant was ordered to answer them. Upon his refusal to do so, he was found in contempt of court.

One group of questions which the defendant was ordered to answer was concerned with the subject matter and content of a lecture given by him at the University of New Hampshire on March 22, 1954. The Trial Court ruled that these questions were relevant to the Attorney General's investigation, on the basis of "the sections in the statute which relate particularly to teaching or advocating communism; and I rule as a matter of law that on the basis of that, the Attorney General is entitled to inquire into the actual content of any lecture given at any school."

By means of the other group of questions in controversy, the Attorney General sought information as to whether certain named persons were active in the Progressive Citizens of America or the Progressive Party in this state. The Trial Court ruled that these questions were also relevant "since under the statute the Attorney General is directed to inquire . . . into any communist infiltration into any political party or organization."

To these rulings and to the denial of his requests for findings and rulings the defendant excepted. His bill of exceptions was allowed and transferred by *Griffith, J.* Other facts appear in the opinion.

Louis C. Wyman, Attorney General, (by brief and orally) *pro se*.

Sheehan, Phinney & Bass (*Mr. Phinney* orally) for the defendant.

Joseph A. Millimet (by brief and orally), as *amicus curiae*.

George Soll, (of New York) for the Academic Freedom Committee of the American Civil Liberties Union (by brief), as *amicus curiae*.

GOODNOW, J. The Attorney General was chosen by the Senate and House of Representatives as a legislative committee to make an investigation "with a view of providing [the Legislature] with information upon which further action by it may be predicated." *Nelson* v. *Wyman*, 99 N. H. 33, 37, 38. The matters concerning which it was authorized to inquire were limited to these "relevant and pertinent to the main object of the investigation." *Id.* 39. The questions asked of a witness appearing before it must likewise fall within this limitation. If they do not, they are irrelevant and need not be answered. When the relevancy of inquiries made of him are questioned by a witness and he declines to answer, the committee may then petition the Superior Court, as it did in this case.

The principal purpose of an action commenced by such a petition is the determination of the relevancy of these questions put to the witness which he has declined to answer. The petition does not seek to have the defendant found in contempt of the investigating committee nor "to vindicate public authority," as he claims. Instead, it "seeks to have the Superior Court propound to the defendant the same questions as were asked him by the Attorney General and in the event he persists in the same answers that he be adjudged *in contempt of the Superior Court.*" (Emphasis supplied.) *State* v. *Uphaus*, 100 N. H. 1, 3. In connection with the petition, the Superior Court is authorized "to proceed in the matter as though the original proceedings had been in court." RSA 491:20. It is thereby granted jurisdiction over the investigation to the extent required by the subject matter of the petition. *State* v. *Uphaus, supra,* 3, 4. Within that area, the Court may order the defendant to answer questions which it deems to be relevant according to the standards applicable in legislative investigations.

The relevancy of questions asked by an investigating committee is not to be determined solely by the standards applicable at the trial of issues in court. "Because of the scope and purpose of [legislative] investigations, pertinency . . . . is necessarily broader than relevancy in the law of evidence." *Orman* v. *United*

States, 207 F(2d) 148, 153. It is not so broad, however, that a question may be sustained as relevant on a mere possibility that it might lead to later relevant questions. *Bowers* v. *United States*, 202 F(2d) 447, 452. The joint resolution authorizing the investigation is the guide of relevancy. If the question is directed at a possible answer (*Orman* v. *United States*, *supra*, 154) which would be reasonably concerned with the main object of the investigation, it is relevant. See *Sinclair* v. *United States*, 279 U. S. 263, 299.

Unless the relation of a particular question is apparent on its face, the burden of establishing its relevancy rests upon the Attorney General. In support of his assertion of relevancy, he is not confined, however, to "the rules of evidence and the presumptions of law applicable in criminal cases," as contended by the defendant. Relevancy, as it applies to a legislative investigation, may stem from a wide variety of factors. The context in which a question is asked may indicate its relevancy. *Bowers* v. *United States*, 202 F(2d) 447, 449. If it does, the transcript of the defendant's entire testimony before the committee may alone furnish a sufficient basis for the court's decision.

In this case, when the Attorney General, as the investigating committee, put the questions to the defendant, he possessed information concerning the defendant's published writings, the persons with whom he had been associated, and his apparent activities in certain organizations. The Attorney General had also acquired in the course of his investigation a knowledge of the tenets of the Communist Party and the methods and operations of communists and their sympathizers. Background information of this sort may also indicate the relation of questions asked by the committee to the subject matter of the investigation. *Orman* v. *United States*, 207 F(2d) 148, 155. If considered to reasonably do so by the court to which it is disclosed, it may furnish a sufficient basis for determining relevancy.

In connection with a lecture entitled "Socialism" given by the defendant as a guest lecturer before a student class at the Univer-

sity of New Hampshire in March, 1954, he was asked "What was the subject of your lecture?" This question the defendant declined to answer and replied: "I stated under oath . . . that I do not advocate or in any way further the aim of overthrowing constitutional government by force and violence. I did not so advocate in the lecture I gave at the University of New Hampshire. In fact, I have never at any time so advocated in a lecture anywhere. Aside from that I have nothing I want to say about the lecture in question." He also refused to answer the following questions: "Didn't you tell the class at the University of New Hampshire . . . that Socialism was inevitable in this country?" "Did you express the opinion, or did you make the statement at that time that Soicalism was inevitable in America?", "Did you advocate marxism at that time?", and "Did you in this last lecture on March 22 or in any of the former lectures espouse the theory of dialectical materialism?" Upon consideration of the transcript of the hearings before the Attorney General and arguments of counsel, the Superior Court ruled these questions to be "relevant under the statute under which the Attorney General is acting" basing its ruling "upon the sections of the statute which relate particularly to teaching or advocating communism."

The statute referred to (RSA *ch.* 588) provides that persons who advocate or teach "any person to commit, attempt to commit or aid in the commission of any act intended to overthrow, destroy or alter" existing government by force or violence are either classified as subversive persons by section 1 or are subjected to criminal penalties by section 2, depending upon whether such advocacy or teaching has been done "knowingly and willfully . . . under such circumstances as to constitute a clear and present danger." (*s.* 2.) *Nelson* v. *Wyman*, 99 N. H. 33, 37.

"It is not always easy to distinguish teaching or advocacy in the sense of incitement from teaching or advocacy in the sense of exposition or explanation." *Dennis* v. *United States*, 341 U. S. 494, 572. The distinction is one of fact. The defendant's

denial that he advocated, taught or in any way furthered the aim of overthrowing constitutional government by force or violence in his lecture is simply his determination of that fact, which the committee could believe or not as it saw fit. The witness could not by his answer impose upon the investigating committee the burden of producing evidence that a doctrine aimed at the violent overthrow of existing government was in fact advocated by him before it could inquire of him concerning the lecture.

An examination of the transcript and the background information furnished to the Court by the Attorney General discloses that the defendant is a socialist and for several years has advocated "the classical conception of socialism: public ownership of the means of production and general economic planning," a system which he stated exists today only in communist countries. He testified that he does not advocate the use of force or violence to establish this system in this country as was done in Russia and China, that he considers himself to be a Marxist in the sense that "Marxism is a body of doctrines about society, history and philosophy . . . not a form of society" and that he is not a member of the Communist Party, has never been one and knows no members of it in this state. He acknowledged past and present affiliations with various organizations and committees which have either been designated by the Attorney General of the United States as subversive or reported by the Committee on Un-American Activities of the United States House of Representatives to be dominated by members of the Communist Party.

The record also discloses that in 1953, the defendant was co-editor of an article appearing in a publication known as the *Monthly Review* which reads in part as follows: "Our Country is preparing to practice violence on a hitherto undreamed-of scale to preserve social order . . . Capitalism, the organization of society according to the barbaric principle of private profit, is the scourge of mankind; and violence designed to preserve it is doubly damned, once for itself and once for its purpose. Those of us who have socialism in our bones . . . must necessarily judge the

violence of the socialist countries differently. We hate it . . . but history . . . decreed that the economic foundations of the society of the future must be laid in backward countries, not only without the assistance of the advanced countries but against their ruthless and implacable resistance. It was thereby rendered inevitable that the process should be difficult, painful and violent. But the process does go forward . . . of that the majestic successes of the Soviet economy . . . is irrefutable proof. For the first time in history we can say that violence is being used to protect regimes which are doing their utmost to create a society which will be able to dispense with violence. That makes all the difference."

Against this background, the Attorney General was reasonably warranted in making his inquiry. The questions concerning the subject matter of the defendant's lecture and those directed at ascertaining what, if anything, the defendant said about marxism and about the inevitability of socialism in this country were clearly relevant to aid the committee in determining whether the defendant had, either "knowingly and wilfully" or otherwise, advocated or taught the overthrow, destructon or alteration of existing government by force or violence.

Whether the defendant's lecture espoused dialectical materialism was equally relevant. According to the History of the Communist Party of the Soviet Union, introduced as an exhibit by the Attorney General at the hearing before the Court, "dialectical materialism is the world outlook of the Marxist-Leninist party". Standing alone, espousal of only one of several tenets of the communist faith would not necessarily establish advocacy of all communist beliefs including those concerned with overthrow of existing government by force and violence. On the other hand, in determining whether a lecture concerned with socialism and marxism, as defined by the defendant, went so far as to include advocacy of force and violence, the espousal of dialectical materialism would have some tendency to indicate that there may also have been an endorsement of the doctrines of the Communist Party.

In addition to specific rulings concerning the questions asked of the defendant about his lecture, the Superior Court also ruled that "the Attorney General is entitled to inquire into the actual contents of any lecture given at any school". This ruling was not essential to the case. It seems appropriate to note in this opinion, however, that it is incorrect standing alone and without qualification. Neither the resolution authorizing this investigation nor the statute to which it refers contains any special directive, express or implied, concerning schools or lectures given at schools.

The authorization given to the Attorney General to act "upon such information as in his judgment may be reasonable or reliable" limits the school lectures about which he may inquire to those concerning which he possesses reasonable or reliable information indicating that the violent overthrow of existing government may have been advocated or taught, either "knowingly and wilfully" or not. See *Oklahoma Press Publishing Co.* v. *Walling*, 327 U. S. 186, 209. It does not, and could not legally, authorize him to examine private citizens indiscriminately in the mere hope of stumbling upon valuable information. *Orman* v. *United States*, 207 F. (2d) 148, 155.

One of the matters as to which the Attorney General was directed to inquire was the existence of subversive organizations in this state in violation of the subversive activities act. In seeking to determine whether the Progressive Party in New Hampshire, and its predecessor, an organization known as the Progressive Citizens of America, might be or have been subversive organizations, the Attorney General asked the following questions of the defendant: "Was . . . your wife active in the formation of the Progressive Citizens of America?", "Was [she] then working with individuals who were then members of the Communist Party?", "Was Charles Beebe active in forming the Progressive Citizens of America?", "Was Charles Beebe active in the Progressive Party in New Hampshire?", "Did Charles Beebe work with your wife in 1947?", and, in connection with a visit of the defendant to the home of Abraham Walenko, "Did it have anything to do with the Progressive Party?".

The defendant has admittedly been active in the Progressive Party. He handled most of its relations with the national office and was a candidate for presidential elector on its ticket in this state in 1952. He offered to answer questions concerning the activities of any person known to him "if such person were identified as a subversive or a communist as defined in the" subversive activities act but declined to answer the questions in controversy as irrelevant, on the grounds that the persons inquired about were not so identified and because the Progressive Party is and was a lawful political organization concerning which no right of inquiry existed.

The statute defines a "subversive organization" as any group of persons associated together for joint action, including a political party, which engages in or advocates or teaches "activities intended to overthrow, destroy or alter" existing government by force or violence. RSA 588:1. Persons who "knowingly and wilfully" assist in the formation, participate in the management or contribute to the support of such an organization, knowing it to be such, are subject to criminal penalties. RSA 588:2(d). Persons who are members of such an organization not "knowingly or wilfully" or are members without knowing the nature of the organization, are classified as subversive persons. RSA 588:1.

The fact that the Progressive Party "is, if still extant, or certainly was, a lawful political organization", as asserted by the defendant, did not preclude inquiry by the Attorney General concerning its purposes and activities until it was shown to be a subversive organization. Under the joint resolution authorizing this investigation, the Attorney General is not authorized to inquire indiscriminately concerning organizations in this state. Only when he possesses "reasonable or reliable" information indicating that an organization may have as one of its purposes, or may be engaged in activities aimed at, the violent overthrow of existing government, is he empowered to inquire into the purposes, activities and membership of that organization. That he did possess information which was sufficient to reasonably warrant

inquiry concerning the Progressive Party is evident from his statement made during the hearings held before him that "considerable sworn testimony has been given in this investigation to the effect that the Progressive Party in New Hampshire has been heavily infiltrated by members of the Communist Party and that the policies and purposes of the Progressive Party have been directly influenced by members of the Communist Party". See *Oklahoma Press Publishing Co.* v. *Walling*, 327 U. S. 186, 209.

Whenever evidence has been received by the committee concerning a particular organization which indicates a reasonable need for further inquiry to determine whether that organization is or is not a subversive one, questions concerned with its activities and purposes as well as those concerned with membership or participation in it by named persons are necessarily relevant. The policies of an organization are established by its members, or sometimes by a small minority of its members. Information as to policies may be obtained in some instances from those members who have participated in the making of them. On the other hand, if subversive purposes actually exist, the witness may not fully disclose his knowledge concerning them and other methods must be used to determine their existence. The extent to which members of the Communist Party are included in the membership of an organization and are active in controlling its policies is clearly related to the question of whether the organization is subversive. A person who has been active in an organization, as was the defendant in the Progressive Party, is a natural source from which the committee may acquire information concerning the purposes of the organization or the identity of those members who established them.

It is on information of this sort that a determination concerning the nature of an organization may be made by a legislative investigating committee. Whether the persons referred to in the questions were or were not in fact Communist Party members or subversive persons is not decisive of the issue of relevancy and the defendant was not entitled to proof of that fact before being required to answer. The questions called for answers concerning

the membership or participation of named persons in the Progressive Party which, if given, would aid the Attorney General in determining whether that party and its predecessor are or were subversive organizations. They were accordingly relevant to the subject matter of the investigation.

The resolution authorizing the investigation is not so vague and lacking in standards as to violate the defendant's right to due process. The Attorney General is not authorized to act on the basis of rumors but only upon information which is "reasonable or reliable." See *Oklahoma Press Publishing Co.* v. *Walling, supra,* 216, 217. Nor is the relevancy of the questions which he is entitled to ask established by "the wheels that go around in the Attorney General's mind." As we have previously noted in this opinion, the questions which may be put to a witness must be directed at a possible answer which would be reasonably concerned with a main object of the investigation. These objects are set forth in the resolution as follows: "to make full and complete investigation with respect to violations of the subversive activities act of 1951 and to determine whether subversive persons as defined in said act are presently located within this state," Laws 1953, *c.* 307. The sections of the act to which reference is made, and with which the circumstances of this case are concerned, define subversive organizations and persons (RSA 555. 1) and the acts of advocacy and teaching (*Id.* 2(b)) and participation in a subversive organization (*Id.* 2(d)) which are made criminal with sufficient clarity to satisfy the requirements of due process. *Nelson* v. *Wyman,* 99 N. H. 33.

It is important to note that the Attorney General is without authority to compel testimony. If he undertakes to act without a basis of reasonable or reliable information, the witness can refuse to answer. If a basis for inquiry exists but the questions which he asks are irrelevant, the witness can also refuse to answer. In either of these events, the Attorney General must, if he insists upon proceeding or receiving an answer to his questions, apply to the Superior Court for a determination of the disputed matter. Unlike the situation which prevails in criminal

proceedings for contempt of a Congressional investigating committee (see *Bowers* v. *United States*, 202 F. (2d) 447), our procedure not only requires a determination by the Superior Court of the reasonableness of the Attorney General's basis for acting, if that question is disputed, and the relevancy of the questions to which answers have been refused but also an opportunity for the witness to answer such questions as have been found relevant by the Court, before a witness can be punished for contempt.

The right to lecture and the right to associate with others for a common purpose, be it political or otherwise, are individual liberties guaranteed to every citizen by the State and Federal Constitutions but are not absolute rights. 29 Ind. L. J. 162, 167. The inquiries authorized by the Legislature in connection with this investigation concerning the contents of the lecture and the membership, purposes and activities of the Progressive Party undoubtedly interfered with the defendant's free exercise of those liberties. He contends that there is no rational basis here for this interference. The issue thus raised involves a conflict between the principles underlying the broad and extensive investigative powers of the Legislature and those upon which the individual rights guaranteed by the Constitution are based. The answer lies in a determination of whether the object of the legislative investigation under consideration is such as to justify the restriction thereby imposed upon the defendant's liberties. *Nelson* v. *Wyman*, 99 N. H. 33, 41. See *Communications Association* v. *Douds*, 339 U. S. 382, 397-400.

The restrictions upon the defendant's freedoms with which we are here concerned result from the investigation authorized by the Legislature and not from legislation directly limiting these freedoms, such as was considered in *Nelson* v. *Wyman*, 99 N. H. 33, 49, 50. "There is a vast difference between the necessities for inquiry and the necessities for action. The latter may be only when danger is clear and present but the former is when danger is reasonably represented as potential." *Barsky* v. *United States*, 167 F. (2d) 241, 247.

The problem of determining whether the threat of subversive activities in this state was sufficiently great to require an investigation and the consequent limitations upon civil liberties was resolved by the Legislature. Its adoption of the resolution authorizing the investigation was its judgment that the danger to existing government posed by subversive activities is potential. We have not changed our views of the Legislature's right to reach that judgment since our opinion in the *Nelson* case in which we upheld "the Legislature's decision to inquire of residents concerning activities aimed at the overthrow of government by force and violence, whenever they occurred." *Id.* 42. The limits of the investigation are subject to control by the Trial Court and therefore should offer no opportunity for any official to "prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion" as claimed by the defendant, nor permit the exposure of witnesses to unfavorable publicity for the mere sake of exposure. Any stultifying effect which the investigation may have upon freedom of expression or any restriction which it may impose upon freedom of association will be in the limited area in which the legislative committee may reasonably believe that the overthrow of existing government by force and violence is being or has been taught, advocated or planned, an area in which the interest of the State justifies this intrusion upon civil liberties. The inquiries which the defendant was directed to answer in this case came within this area.

Exceptions overruled.

All concurred.

SECOND MOTION FOR REHEARING

No. 5395

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

Merrimack, ss. 1956 Term

LOUIS C. WYMAN, *Attorney General*

vs.

PAUL M. SWEEZY

DEFENDANT'S FURTHER MOTION FOR A REHEARING

Now comes the defendant, Paul M. Sweezy, and again respectfully requests that he be granted a rehearing of the cause, and assigns the following reasons:

(1) Since March 29, 1956, when defendant's original motion for a rehearing was denied, the Supreme Court of the United States, on April 1, 1956, handed down an opinion in the case of *Pennsylvania v. Steve Nelson* (See *The New York Times*, Tuesday, April 3, 1956, City Edition Page 28 for full text of the decision) in which it decided that ". . . Congress has occupied the field to the exclusion of parallel state legislation, that the Federal Government precludes state intervention and that administration of state acts would conflict with the operation of the Federal plan . . ." It would appear, therefore, that RSA, Chapter 588 is superseded as is Chapter 307 Laws of 1953 authorizing the Attorney General to make investigation with respect to violations of RSA Chapter 588 and to determine whether "subversive person" as defined in said Chapter 588, are within the state.

Respectfully submitted,

PAUL M. SWEEZY,
SHEEHAN, PHINNEY AND BASS,
By (s) WILLIAM L. PHINNEY,
His Attorneys.

Dated: April 4, 1956.

APPENDIX B

LAWS OF NEW HAMPSHIRE 1951

CHAPTER 193

AN ACT RELATIVE TO SUBVERSIVE ACTIVITIES

WHEREAS, there is a World Communist movement under the domination of a foreign power, having as its objective the establishment of totalitarian dictatorship in all parts of the world under its control; and

WHEREAS, such dictatorship is characterized by the liquidation of all political parties other than the Communist Party, the abolishment of free speech, free assembly, and freedom of religion, and is the complete antithesis of the American constitutional form of government; and

WHEREAS, the methods used by such a police state include treachery, deceit, infiltration into governmental and other institutions, espionage, sabotage, terrorism and other unlawful means; and

WHEREAS, the World Communist movement is not a political movement, but is a world-wide conspiracy having sections in each country, and

WHEREAS, using the methods above set forth, it has already successfully conquered in recent years a large part of the world and has established spearheads in this country in the form of various conspiratorial organizations, some masquerading under the pretense of being political parties, others infiltrating organizations which they seek to control in order to further the objectives of the World Communist movement; and

WHEREAS, the subversive groups have had similar objectives and it is essential to the preservation of the state, as well as for the protection of citizens from unfounded accusations, that criminal acts of a seditious nature be clearly and expressly defined, and

WHEREAS, the methods adopted by subversive persons and organizations render it imperative that the loyalty of persons entering the public employment of the state of New Hampshire or any of its political subdivisions be definitely established, not only for protection of governmental processes but in order to shield employees from unfounded accusations of disloyalty; therefore

Be it enacted by the Senate and House of Representatives in General Court convened:

1. **Subversive Activities.** Amend the Revised Laws by adding after chapter 457 the following new chapter:

Chapter 457-A

Subversive Activities

1. **Definitions.** For the purposes of this chapter "organization" means an organization, corporation, company, partnership, association, trust, foundation, fund, club, society, committee, association, political party, or any group of persons, whether or not incorporated, permanently or temporarily associated together for joint action or advancement of views on any subject or subjects.

"Subversive organization" means any organizaton which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach activities intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or of any political subdivision of either of them, by force, or violence.

"Foreign subversive organization" means any organization directed, dominated or controlled directly or indirectly by a foreign government which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or to advocate,

abet, advise, or teach, activities intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of the constitutional form of government of the United States, or of the state of New Hampshire, or of any political subdivision of either of them, and to establish in place thereof any form of government the direction and control of which is to be vested in, or exercised by or under, the domination or control of any foreign government, organization, or individual; but does not and shall not be construed to mean an organization the *bona fide* purpose of which is to promote world peace by alliances or unions with other governments or world federations, unions or governments to be effected through constitutional means.

"Foreign government" means the government of any country or nation other than the government of the United States of America or of one of the states thereof.

"Subversive person" means any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches, by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force, or violence; or who is a member of a subversive organization or a foreign subversive organization.

Sedition

2. **Felonies.** It shall be a felony for any person knowingly and wilfully to

(a) commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force or violence; or

(b) advocate, abet, advise, or teach by any means any person to commit, attempt to commit, or assist in the commission of any such act under such circumstances as to constitute a clear and present danger to the security of the United States, or of the state of New Hampshire or of any political subdivision of either of them; or

(c) conspire with one or more persons to commit any such act; or

(d) assist in the formation or participate in the management or to contribute to the support of any subversive organization or foreign subversive organization knowing said organization to be a subversive organization or a foreign subversive organization; or

(e) destroy any books, records or files, or secrete any funds in this state of a subversive organization or a foreign subversive organization, knowing said organization to be such.

Any person who shall be convicted by a court of competent jurisdiction of violating any of the provisions of this section shall be fined not more than twenty thousand dollars, or imprisoned for not more than twenty years, or both, at the discretion of the court.

3. **Penalty.** It shall be a felony for any person after August 1, 1951 to become, or after November 1, 1951 to remain a member of a subversive organization or a foreign subversive organization knowing said organization to be a subversive organization or foreign subversive organization. Any person who shall be convicted by a court of competent jurisdiction of violating this section shall be fined not more than five thousand dollars, or imprisoned for not more than five years, or both, at the discretion of the court.

4. **Barred from Office.** Any person who shall be convicted by a court of competent jurisdiction of violating any of the provisions of sections 2 and 3 of this chapter, in addition to all other penalties therein provided, shall from the date of such conviction be barred from

(a) holding any office, elective or appointive, or any other position of profit or trust in or employment by the government of the state of New Hampshire or any agency thereof or of any county, municipal corporation or other political subdivision of said state;

(b) filing or standing for election to any public office in the state of New Hampshire.

5. **Dissolution of Organizations.** It shall be unlawful for any subversive organization or foreign subversive organization to exist or function in the state of New Hampshire and any organization which by a court of competent jurisdiction is found to have violated the provisions of this section shall be dissolved, and if it be a corporation organized and existing under the laws of the state of New Hampshire, a finding by a court of competent jurisdiction that it has violated the provisions of this section shall constitute legal cause for forfeiture of its charter and its charter shall be forfeited, and all funds, books, records and files of every kind and all other property of any organization found to have violated the provisions of this section shall be seized by and for the state of New Hampshire, the funds to be deposited in the state treasury and the books, records, files and other property to be turned over to the attorney general of New Hampshire.

6. **Assistance Furnished.** For the collection of any evidence and information referred to in this chapter, the attorney general is hereby directed to call upon the superintendent of state police, and county and municipal police authorities of the state to furnish him such assistance as may from time to time be required. Such police authorities are directed to furnish information and assistance as may be from time to time so requested. The attorney general may testify before any grand jury as to matters referred to in this chapter as to which he may have information.

7. **Records.** The attorney general shall maintain complete records of all information received by him and all matters handled by him under the requirements of this chapter. Such records as

may reflect on the loyalty of any resident of this state shall not be made public nor divulged to any person except with the permissions of the attorney general to effectuate the purposes hereof.

8. **Grand Jury Inquiries.** The superior court, when in its discretion it appears appropriate or when informed by the county solicitor that there is information or evidence of the character described in section 2 of this chapter to be considered by the grand jury, shall charge the grand jury to inquire into violations of this chapter for the purpose of proper action, and further to inquire generally into the purposes, processes and activities and any other matters affecting communism or any related or other subversive organizations, associations, groups or persons.

Loyalty

9. **Employment.** No subversive person, as defined in this chapter, shall be eligible for employment in, or appointment to any office, or any position of trust or profit in the government of, or in the administration of the business of this state, or of any county, municipality, or other political subdivision of this state.

10. **Written Statements Required.** Every person and every board, commission, council, department, court or other agency of the state of New Hampshire or any political subdivision thereof, who or which appoints or employs or supervises in any manner the appointment or employment of public officials or employees shall establish by rules, regulations or otherwise, procedures designed to ascertain before any person, including teachers and other empoyees of any public educational institution in this state, is appointed or employed, that he or she as the case may be, is not a subversive person, and that there are no reasonable grounds to believe such persons are subversive persons. In the event such reasonable grounds exist, he or she as the case may be, shall not be appointed or employed. In securing any facts necessary to ascertain the information herein required, the applicant shall be required to sign a written statement containing answers to such inquiries as may be material, which statement shall contain notice that it is subject to the penalties of perjury.

11. **Exceptions.** The inquiries prescribed in section 10 other than the written statement to be executed by an applicant for employment, shall not be required as a prerequisite to the employment of any persons in the classification of laborers in any case in which the employing authority shall in his or its discretion determine, and by rule and regulation specify the reasons why, the nature of the work to be performed is such that employment of persons as to whom there may be reasonable grounds to believe that they are subversive persons as defined in this chapter will not be dangerous to the health of the citizens or the security of the government of the United States, the state of New Hampshire or any political subdivision thereof.

12. **Present Employees.** Every person, who on August 1, 1951 shall be in the employ of the state of New Hampshire or of any political subdivsion thereof, other than those now holding elective office shall be required on or before October 1, 1951 to make a written statement which shall contain notice that it is subject to the penalties of perjury, that he or she is not a subversive person as defined in this chapter, namely, any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force, or violence; or who is a member of a subversive organization or a foreign subversive organization, as more fully defined in this chapter such statement shall be prepared and execution required by every person and every board, commission, council, department, court, or other agency of the state of New Hampshire or any political subdivision thereof responsible for the supervision of employees under its jurisdiction. Any such person failing or refusing to execute such a statement or who admits he is a subversive person as defined in this chapter shall immediately be discharged.

13. **Discharge of Personnel; Hearing.** Reasonable grounds on all the evidence to believe that any person is a subversive person, as defined in this chapter shall be cause for discharge from any appointive office or other position of profit or trust in the government of or in the administration of the business of this state, or of any county, municipality or other political subdivision of this state, or any agency thereof. The personnel commission shall, by appropriate rules or regulations, prescribe that persons charged with being subversive persons, as defined in this chapter, shall be accorded notice and opportunity to be heard, in accordance with the procedures prescribed by law for discharges for other reasons. Every person and every board, commission, council, department or other agency of the state of New Hampshire or any political subdivision thereof having responsibility for the appointment, employment or supervision of public employees not covered by the state classified service shall establish rules or procedures similar to those required herein for classified services for a hearing for any person charged with being a subversive person, as defined in this chapter after notice and opportunity to be heard. Every employing authority discharging any person pursuant to any provision of this chapter shall promptly report to the attorney general the fact of and the circumstances surrounding such discharge. A person discharged under the provisions of this section shall have the right within thirty days thereafter to appeal to the superior court of the county where such person may reside for a determination by such court (with the aid of a jury if the appellant so elects) as to whether or not the discharge appealed from was justified under the provisions of this act. The court shall speedily hear and determine such appeals, and from the judgment of the court, there shall be a further appeal to the supreme court of New Hampshire as in civil cases.

14. **Declarations of Candidates.** No person shall become a candidate for election to, nor qualify for, any public office under the election laws of this state unless he or she shall file with the declaration of candidacy, or prior to qualifying, an affidavit that he or she is not a subversive person as defined in this chapter. No

declaration of candidacy shall be received for filing by any town or city clerk or by the secretary of state unless accompanied by the affidavit aforesaid and there shall not be entered upon any ballot or voting machine at any election the name of the person who has failed or refused to make the affidavit aforesaid.

15. **False Statements.** Every written statement made pursuant to this chapter by an applicant for appointment or employment, or by any employee shall be deemed to have been made under oath if it contains a declaration preceding the signature of the maker to the effect that it is made under the penalties of perjury. Any person who makes a material misstatement of fact (a) in any such written statement, or (b) in any affidavit made pursuant to the provisions of this chapter, or (c) under oath in any hearing conducted by any agency of the state, or of any of its political subdivisions, pursuant to this chapter, or (d) in any written statement by an applicant for appointment or employment or by an employee in any state aid institution of learning in this state, intended to determine whether or not such applicant or employee is a subversive person as defined in this chapter, which statement contains notice that it is subject to the penalties of perjury shall be subject to the penalties of perjury prescribed in chapter 457 of the Revised Laws.

16. **Separability.** If any provision, phrase, or clause of this chapter or the application thereof to any person or circumstance is held invalid, such invaldity shall not affect other provisions, phrases, or clauses or applications of this chapter which can be given effect without the invalid provision, phrase, or clause or application and to this end the provisions, phrases and clauses of this chapter are declared to be severable.

17. **Title.** This chapter may be cited as the Subversive Activities Act of 1951.

This act shall take effect August 1, 1951.

(Approved August 1, 1951.)

NEW HAMPSHIRE LAWS 1953

CHAPTER 307

Joint Resolution Relating to the Investigation of Subversive Activities

Resolved by the Senate and House of Representatives in General Court convened:

That the attorney general is hereby authorized and directed to make full and complete investigation with respect to violations of the subversive activities act of 1951 and to determine whether subversive persons as defined in said act are presently located within this state. The attorney general is authorized to act upon his own motion and upon such information as in his judgment may be reasonable or reliable. He may authorize any member of his staff to conduct on his behalf any part of the investigation herein provided for and in such event and for such purposes any member so authorized shall have all of the powers herein granted to the attorney general.

For the purposes of this resolution, the attorney general or any duly authorized member of his staff is authorized to sit and act at such times and places during this session of the 1953 legislature, recess and adjourned periods, and to employ such attorneys, experts, clerical and other assistance as may be required, to require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, and documents, and to administer such oaths, to take such testimony and to make such expenditures within the limitations authorized herein as he deems advisable. The provisions of section 7 of chapter 193 of the Laws of 1951 shall be inapplicable to the investigation provided for herein, and the attorney general is hereby authorized to make public such information received by him, testimony given before him, and matters handled by him as he deems fit to effectuate the purposes of this resolution.

The attorney general is directed to proceed with criminal prosecutions under the subversive activities act whenever evidence presented to him in the course of the investigation indicates violations thereof, and he shall report to the 1955 session on the first day of its regular session the results of this investigation, together with his recommendations, if any, for necessary legislation. There is hereby appropriated for the expenses of this investigation the sum of ten thousand dollars which shall include the cost of printing such report as is provided for by this resolution and shall be expended under the direction of the attorney general, but nothing herein contained shall limit the power of the attorney general to act in cases of reasonable necessity under the provisions of section 11 of chapter 24 of the Revised Laws. The governor is hereby authorized to draw his warrants for the sum hereby appropriated out of any money in the treasury not otherwise appropriated.

[Approved June 17, 1953.]

APPENDIX C

THE QUESTIONS

Question: "Was she, Nancy Sweezy, your wife, active in the formation of the Progressive Citizens of America?

"A. I decline to answer the question on advice of counsel and for reasons stated by counsel."

Question: "Was Nancy Sweezy then working with individuals who were then members of the Communist Party?

"A. I decline to answer the question on advice of counsel and for reasons stated by counsel."

Question: "Was Charles Beebe active in forming the Progressive Citizens of America?

"A. I decline to answer the question on advice of counsel and for reasons stated by counsel."

Question: "Did he work with your present wife - - Did Charles Beebe work with your present wife in 1947?

"A. I decline to answer the question on advice of counsel and for reasons stated by counsel."

Question: "Was he then a member of the Communist Party?

"A. [Mr Wyman, I told you that I didn't know any members of the Communist Party then or later."

Question: "MR. WYMAN: Yes. 'Mr. Sweezy, where and when did you first know Abraham Walenko?'

"Answer: 'I think it was in Manchester in 1948 sometime.

"'Question. You don't remember just where you first met him?

"'Answer. No.

"'Question. Have you been to his house in Weare?

"'Answer. Yes.

"'Question. When did you go to his house in Weare?

"'Answer. During 1948.

"'Question. Did it have anything to do with the Communist Party?

"'Answer. No.'"

Question: "Did it have anything to do with the Progressive Party?

"A. I decline to answer the question on advice of counsel and for reasons stated by counsel."

Question: "What was the subject of your lecture?" (R. pp. 226, 277).

Answer: "I would like to say one thing in this connection, Mr. Wyman. I stated under oath at my last appearance that, and I now repeat it, that I do not advocate or in any way further the aim of overthrowing constitutional government by force and violence. I did not so advocate in the lecture I gave at the University of New Hampshire. In fact I have never at any time so advocated in a lecture anywhere. Aside from that I have nothing I want to say about the lecture in question." (R. pp. 58, 59).

Question: "What was the subject of your lecture?

"A. I decline to answer the question on advice of counsel and for reasons given by counsel."

Question: ". . . . And now; do you believe in Communism?

"A. If the definition and characterization of Communism are those presented in the preamble to the 1951 act, the answer to that is no. Beyond that, however, I decline to answer the question on advice of counsel and for reasons given by counsel."

Question: "Didn't you tell the class at the University of New Hampshire on Monday, March 2, 1954, that Socialism was inevitable in this country?

"A. I decline to answer that question on advice of counsel and for reasons already stated by counsel."

Question: "Was Charles Beebe active in the Progressive Party in New Hampshire?

"A. I decline to answer the question on advice of counsel and for reasons given by counsel."

Question: "Did you advocate Marxism at that time?

"A. I decline to answer the question on advice of counsel and for reasons given by counsel."

Question: "Did you express the opinion, or did you make the statement at that time that Socialism was inevitable in America?

"A. I decline to answer the question on advice of counsel and for reasons stated by counsel."

Question: "Did you in this last lecture on March 22 or in any of the former lectures espouse the theory of dialectical materialism?

"A. I decline to answer the question on advice of counsel and for reasons given by counsel."

Question: "I have in the file here a statement from a person who attended your class, and I will read it in part because I don't want you to think I am just fishing. 'His talk this time was on the inevitability of the Socialist program. It was glossed-over interpretation of the materalist dialectic.' Now, again I ask you the original question.

"A. I decline to answer the question on advice of counsel and for reasons given by counsel." (R. pp. 228, 229, 230).

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APPENDIX D

Merrimack,
No. 4509.

GORDON KAHN

v.

LOUIS C. WYMAN, *Attorney General*

Submitted May 31, 1956

Decided June 8, 1956

PETITION, for declaratory judgment and injunctive relief seeking a declaration that RSA 588 and Laws 1953, *c.* 307 and Laws 1955, *c.* 197 are superseded and of no effect. The plaintiff has been ordered by the defendant to appear before him in his investigation of subversive activities. The present proceedings seek to halt this investigation on the grounds that the field of prosecution and investigation of subversive activities is now exclusively occupied by the federal authorities. After hearing, the Superior Court denied the petition and the defendant's exceptions were reserved and transferred by *Westcott*, J.

Tiffany & Osborne for the plaintiff.

Louis C. Wyman, Attorney General, *pro se*.

Hugh H. Bownes, amicus curiae.

PER CURIAM. The divided opinion in *Pennsylvania* v. *Nelson*, 350 U. S. 497 (decided April 2, 1956) is interpreted to hold that this state is precluded from prosecuting crimes which involve sedition and subversive activities directed against the government of the United States because as there stated the enforcement of state acts forbidding such activities "presents a serious danger of conflict with the administration of the federal program." See also, *Commonwealth* v. *Gilbert*, (Mass.) 134 N. E. (2d) 13 (decided May 3, 1956)

In the present case, however, the issue is whether or not the *Nelson* case precludes the Legislature of this state from conducting investigations of subversive activities within the state as distinct from providing for the prosecution of crimes. While it is not clear what a state legislative investigation of subversive activities may accomplish at the present time, we are not satisfied that the *Nelson* case, *supra*, purports to preclude such an investigation. If state investigation of subversive activities is to be prohibited, a declaration to that effect must come from higher authority than this court. We know of no decision of any court which has ruled that the investigative aspects of state subversive activities legislation have been preempted by the federal government. We therefore conclude that the Trial Court was correct in dismissing this petition.

Questions attempted to be raised about the validity of the Immunity Act (Laws 1955, c. 312) are not involved in this proceeding at this time.

Petition dismissed.

Supreme Court, U.S.
FILED
JAN 22 1957
JOHN T. FEY, Clerk

In the

Supreme Court of the United States

OCTOBER TERM, 1956

No. 175

PAUL M. SWEEZY,
Appellant,
vs.
STATE OF NEW HAMPSHIRE
by LOUIS C. WYMAN,
ATTORNEY GENERAL,
Appellee

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

BRIEF FOR APPELLANT

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In the

Supreme Court of the United States

OCTOBER TERM, 1956

No. 175

PAUL M. SWEEZY,
Appellant,

vs.

STATE OF NEW HAMPSHIRE
by LOUIS C. WYMAN,
ATTORNEY GENERAL,
Appellee

BRIEF FOR APPELLANT

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

OPINIONS BELOW

The judgment and order of the Superior Court of New Hampshire are not reported; they appear on page 208 of the record herein. The opinion of the Supreme Court of New Hampshire is reported at 100 N. H. 103, 121 Atl. 2d 783, and is printed in the record at pages 210-222.

The ruling of the Supreme Court of New Hampshire on appellant's second motion for rehearing is not reported but appears at page 209 of the record.[1]

JURISDICTION

Petition was filed by Louis C. Wyman, Attorney General of the State of New Hampshire, on June 11, 1954, in the Superior Court for Merrimack County, New Hampshire, pursuant to Revised Laws of New Hampshire (1942), Chapter 370, Sections 18 and 19 (now N. H. Rev. Stat. Ann., 1955, Ch. 491, Sec. 19 and 20) (R. 3-11). The petition sought to compel appellant to answer certain questions which he had refused to answer during the course of an investigation conducted by the Attorney General of New Hampshire under New Hampshire Laws of 1953, Chapter 307, which delegated to the Attorney General power to investigate certain matters in connection with New Hampshire Laws of 1951, Chapter 193 (now N. H. Rev. Stat. Ann., 1955, Ch. 588, Sec. 1-16). After hearing, the Superior Court on June 30, 1954, ordered appellant to answer before the Court certain of the questions propounded by the Attorney General and, upon his refusal, adjudged him in contempt of court, and ordered him committed to the County Jail until purged of contempt (R. 201-8).

Appellant thereupon excepted to the Superior Court's rulings and appealed to the Supreme Court of New Hampshire, the highest court of the State of New Hampshire (R. 1-3). On March 6, 1956, the Supreme Court of New Hampshire overruled appellant's exceptions and affirmed the judgment and order of the Superior Court (R. 210-22). Motion for rehearing was

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[1] In denying appellant's first motion for rehearing (R. 222-3) the Supreme Court of New Hampshire modified its original opinion in minor respects. The opinion as reported, and as printed in the record here, incorporates these changes.

filed by appellant and denied on March 29, 1956 (R. 222-3, 209). A second motion for rehearing was denied April 19, 1956 (R. 224, 209).

Notice of appeal to the Supreme Court of the United States was filed with the Supreme Court of New Hampshire on April 19, 1956 (R. 227-9). The Jurisdictional Statement was filed with this Court on June 18, 1956, and on October 8, 1956 the Court entered an order postponing further consideration of the question of jurisdiction to the hearing of the case on the merits (R. 230).

The jurisdiction of this Court is invoked under Title 28, United States Code, Sections 1257 (2) and 2101 (e). Discussion of the jurisdictional issues raised by this appeal appears in Point I of this brief (*infra*, pp. 21-6).

QUESTIONS PRESENTED

1. Whether Chapter 307, New Hampshire Laws of 1953, which the Supreme Court of New Hampshire has construed as authorizing the Attorney General of New Hampshire, acting as a legislative committee, to compel appellant to answer certain questions concerning statements made by appellant in lectures before classes at the University of New Hampshire, violates appellant's right to freedom of speech as guaranteed by the First and Fourteenth Amendments of the Constitution of the United States.

2. Whether Chapter 307, New Hampshire Laws of 1953, which the Supreme Court of New Hampshire has construed as authorizing the Attorney General of New Hampshire, acting as a legislative committee, to compel appellant to answer certain questions concerning the activities of appellant and others in connection with the Progressive Citizens of America and the Progressive Party, violates appellant's rights to freedom of speech or assembly or the right to petition for redress of grievances,

as guaranteed by the First and Fourteenth Amendments of the Constitution of the United States.

3. Whether Chapter 307, New Hampshire Laws of 1953, which the Supreme Court of New Hampshire has construed as set forth in questions 1 and 2, deprives appellant of liberty and property without the due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States.

4. Whether Chapter 307, New Hampshire Laws of 1953, which the Supreme Court of New Hampshire has construed as set forth in questions 1 and 2, violates Article VI of the Constitution of the United States in that it purports to deal with matters within the exclusive power of the Federal Government, and with respect to which the Federal Government has already legislated to the exclusion of state legislation.

STATUTES INVOLVED

The statutes involved are New Hampshire Laws of 1951, Chapter 193 (now N. H. Rev. Stat. Ann., 1955, Ch. 588, Sec. 1-16), known as "The Subversive Activities Act of 1951;" and New Hampshire Laws of 1953, Chapter 307, a "Joint Resolution Relating to the Investigation of Subversive Activities." Both statutes are printed in Appendix A to this brief (*infra*, pp. 62 and 71).

Also printed in Appendix A are New Hampshire Laws of 1955, Chapter 181 (N. H. Rev. Stat. Ann., 1955, Supp. Ch. 588, Sec. 3a and 3b), amending the Subversive Activities Act of 1951 (App. A, *infra*, p. 72); and New Hampshire Laws of 1955, Chapter 197 and 340, extending the authority of the Attorney General to investigate until June 30, 1957 (App. A, *infra*, pp. 74 and 75).

STATEMENT OF THE CASE

This case involves the power of a state legislature, conducting a legislative inquiry through the Attorney General of the state, to compel appellant to answer questions concerning the contents of his lectures as a guest speaker at the University of New Hampshire. It also raises the question whether such a legislative investigation can probe into appellant's participation in the Progressive Party and Progressive Citizens of America, political organizations not shown to have engaged in any illegal activity. In both situations appellant answered all questions pertaining to the use or advocacy of force or violence, but the Attorney General attempted to go beyond this point and question appellant concerning wholly legitimate expression. The issues, it will be noted, arise in the vital areas of academic freedom and the right of political association.

Appellant, Paul M. Sweezy, is a resident of Wilton, New Hampshire, where he has lived in the summer since he was six years of age, and continuously since the end of World War II (R. 19). Dr. Sweezy is a graduate of Phillips Exeter Academy and Harvard University (R. 20). He studied at the London School of Economics and at the University of Vienna, and obtained a doctor's degree in economics from Harvard in 1937 (R. 20). From 1934 to 1942 Dr. Sweezy was a member of the Harvard faculty, leaving to enter the armed forces (R. 20). During most of the War he was assigned to the Office of Strategic Services (R. 20). He left the Army as a Second Lieutenant (R. 20), receiving a Bronze Star for his service (Exhibit 7, not printed, R. 144). Upon returning to civilian life, Dr. Sweezy was awarded a research scholarship by the Social Science Research Council (R. 21). Since the War, he has devoted himself to research, writing, and the publication of a monthly journal of opinion, *The Monthly Review* (R. 21, 39).

Dr. Sweezy is a distinguished economist and a well-known authority upon socialism (R. 143-4). Among his published works are *The Theory of Capitalist Development (1942)*, *Socialism (1949)*, and, most recently, *The Present as History* (R. 32, 34, 144). In political orientation he is a socialist and a Marxist (R. 39-45, 80-2, 108-10, 144). Beginning in 1952 he had been invited by the staff at the University of New Hampshire in charge of the Humanities Course to give a lecture on socialism each year to the students in that course (R. 70-2, 103-4). He also participated in class discussions at the University of New Hampshire on other occasions (R. 103).

In 1951 New Hampshire passed The Subversive Activities Act of 1951 (N. H. Laws of 1951, Ch. 193, reprinted in Appendix A, *infra*, pp. 62-70). Briefly, this statute set forth definitions of "subversive organization," "foreign subversive organization," and "subversive person;" it declared certain acts, utterances and participation in "subversive organizations" or "foreign subversive organizations" to be felonies, subject to imprisonment up to twenty years; it made the existence of such organizations unlawful and provided for their dissolution; and it made "subversive persons" ineligible for government employment or election to public office and established a loyalty program to eliminate them from government service. The definition of "subversive person" in the Act is as follows:

> "'Subversive person' means any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches, by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force, or violence; or who is a member of a subversive organization or a foreign subversive organization" (Sec. 1).

Two years later, the New Hampshire legislature passed the Joint Resolution Relating to the Investigation of Subversive Activities (N. H. Laws of 1953, Ch. 307, reprinted in Appendix A, *infra*, pp. 71-2). This resolution authorized and directed the Attorney General "to make full and complete investigation with respect to violations of the subversive activities act of 1951 and to determine whether subversive persons as defined in said act are presently located within this state." The Attorney General was directed to "report to the 1955 session . . . the results of this investigation, together with his recommendations, if any, for necessary legislation." He was further authorized "to require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, and documents . . . as he deems advisable." The Attorney General was given no power to punish witnesses for refusal to answer questions or produce material; it was contemplated that enforcement of such requirements would be by application to the Superior Court under Revised Laws of New Hampshire (1942), Chapter 370, Sections 18 and 19 (now N. H. Rev. Stat. Ann., 1955, Ch. 491, Sec. 19 and 20).[2]

Acting under the above joint resolution the Attorney General, by subpoena dated October 5, 1953, summoned appellant to appear and give testimony at a hearing set for January 8, 1954 (R. 4). On that date appellant appeared before the Attorney General and testified (R. 18-62). Appellant was not accompanied by counsel, his counsel being engaged on that day with another matter (R. 18). Appellant answered a number of questions propounded by the Attorney General, but declined to answer certain others, basing his refusal upon the ground that the questions were irrelevant and invaded his freedom under the First Amendment (see *infra*).

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[2]The Attorney General's authority was extended to June 30, 1957, by New Hampshire Laws of 1955, Chapters 197 and 340. See Appendix A, *infra*, pp. 74 and 75).

On April 30, 1954, the Supreme Court of New Hampshire rendered its decision in *Nelson v. Wyman*, 99 N. H. 33. This case involved another witness, called by the Attorney General in the course of his investigation, who had refused to answer certain questions. Upholding the constitutionality of the resolution relating to the investigation of subversive activities (Laws of 1953, Ch. 307) and, so far as applicable to the case, the Subversive Activities Act of 1951 (Laws of 1951, Ch. 193), and refusing the witness' request to be relieved of answering the questions propounded, the Supreme Court of New Hampshire specifically ruled:

(1) The definition of "subversive person," as used in the two statutes, included persons who were engaging in the specified acts "whether or not done 'knowingly and willfully'" (99 N. H. at 39), and persons who were "members of subversive organizations not knowing them to be such" (99 N. H., at 37).

(2) The Attorney General, when acting under the 1953 Resolution, was exercising the legislative power of investigation, delegated to him by the legislature (99 N. H. at 36-9): "His position as the chief law enforcement officer of the State did not transform the inquiry which was otherwise legislative into executive action" (99 N. H. at 38).

(3) The existence of Federal legislation dealing with subversive activity (the Court referred only to the Smith Act) "does not preclude State legislation on the same subject matter" (99 N. H. at 49). The Court expressly rejected the conclusion reached in *Commonwealth* v. *Nelson*, 377 Pa. 58, the decision later affirmed by this Court in *Pennsylvania* v. *Nelson*, 350 U.S. 497.

On June 3, 1954, appellant was recalled by the Attorney General and, accompanied by counsel, was subjected to further questioning (R. 62-115).

In a prepared statement read at the opening of the first hearing, appellant defined his position with respect to answering questions in the following terms:

> "I have studied the subversive activities act of 1951 with care, and I am glad to volunteer the information that I have absolutely no knowledge of any violations of any of its provisions; further, that I have no knowledge of subversive persons presently located within the state.
>
> "That these statements may carry full conviction, I am prepared to answer certain questions about myself, though in doing so I do not mean to concede the right to ask them. I am also prepared to discuss my views relating to the use of force and violence to overthrow constitutional forms of government.
>
> "But I shall respectfully decline to answer questions concerning ideas, beliefs, and associations which could not possibly be pertinent to the matter here under inquiry and or which seem to me to invade the freedoms guaranteed by the First Amendment to the United States Constitution (which, of course, applies equally to the several states)." (R. 61-2).

During the course of the two hearings, appellant testified, in response to questions of the Attorney General, that he was a socialist and a Marxist (R. 39, 82, 108); that he advocated "the classical conception of socialism—public ownership of the means of production and general economic planning" (R. 41); and that he took the position it was possible to effect the transition to socialism in the United States without force or violence (R. 41-2, 108-10).

Appellant further testified that he was not and never had been a member of the Communist Party (R. 22, 48, 79); that he had never attended any meetings of the Communist Party (R. 22, 48, 78); that he had never contributed to the Communist Party (R. 51); that he did not know any person in New Hampshire

to be a member of the Communist party (R. 21-2, 50, 63-4); that he did not advocate or teach, and never had advocated or taught, overthrow of the government by force or violence (R. 25, 40-1, 70; see also R. 55, 110); that he had not assisted any group which advocated the overthrow of the government by force or violence (R. 25), or known any person or group in New Hampshire who so advocated (R. 25); and that he did not know of any "subversive" activities or any "subversive persons" in New Hampshire, as defined by the New Hampshire statutes (R. 51, 61).

Appellant answered all questons with respect to his membership in and association with various organizations he was questioned about, other than the Progressive Citizens of America and the Progressive Party (R. 24-39, 86-96). He likewise responded to all questions as to whether named individuals were members of the Communist Party or "subversive persons" within the meaning of the New Hampshire statutes (R. 22, 64-6, 77-9, 92-6, 99-103; see also R. 13), and to all questions with regard to Communist influence on organizations with which he had any connection including the Progressive Party (R. 49-50, 91-2, 98-9).

The questions appellant refused to answer fall within three categories: (1) those relating to his lectures at the University of New Hampshire; (2) those relating to the activities of himself and others in the Progressive Citizens of America and the Progressive Party; and (3) those relating to opinion and belief. Appellant's refusal to answer questions in the third group was upheld by the Superior Court (R. 194-5, 208-9), and in this appeal we are concerned only with the questions in the first two groups.[3]

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[3] Actually appellant answered a number of questions dealing with opinion and belief, though still maintaining his right to refuse to do so.

(1) With regard to the lectures, appellant testified that he had, at the invitation of the faculty members conducting the Humanities Course at the University of New Hampshire, delivered a lecture in that course for the past three years (R. 70-2); that in addition he had attended other sessions of the Humanities Course during the same period and participated in discussion (R. 103-4); that neither in his lectures nor at any other time did he "advocate or in any way further the aim of overthrowing constitutional government by force and violence" (R. 70, 105); and that he did not "advocate Communism" in his lectures (R. 105). Appellant refused to answer, expressly upon First Amendment grounds (R. 70, 79-80, 107, 58-62), the following questions:[4]

"Q. What was the subject of your lecture?

"A. I decline to answer the question on advice of counsel and for reasons given by counsel." (R. 205; see R. 70).

"Q. Didn't you tell the class at the University of New Hampshire on Monday, March 22, 1954, that Socialism was inevitable in this country?

"A. I decline to answer that question on advice of counsel and for reasons already stated by counsel." (R. 205; see R. 79, 84, 105).

"Q. Did you advocate Marxism at that time?

"A. I decline to answer the question on advice of counsel and for reasons given by counsel." (R. 206; see R. 105).

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[4]The questions and answers quoted are taken from the proceedings before the Superior Court where the questions at issue here were repeated by the Attorney General after the Superior Court had ordered appellant to answer. References to the place in the record where the questions were originally asked in the proceedings before the Attorney General are indicated by the page numbers following the word "see."

"Q. Did you express the opinion, or did you make the statement at that time that Socialism was inevitable in America? . . .

"A. I decline to answer the question on advice of counsel and for reasons stated by counsel." (R. 206; see R. 105).

"Q. Did you in this last lecture on March 22 or in any of the former lectures espouse the theory of dialectical materialism? . . .

"A. I decline to answer the question on advice of counsel and for reasons given by counsel."

"Q. I have in the file here a statement from a person who attended your class, and I will read it in part because I don't want you to think I am just fishing. 'His talk this time was on the inevitability of the Socialist program. It was glossed-over interpretation of the materialist dialectic.' Now, again I ask you the original question . . .

"A. I decline to answer the question on advice of counsel and for reasons given by counsel." (R. 206-7; see R. 105, 107).

(2) With regard to the Progressive Party and the Progressive Citizens of America (the forerunner of the Progressive Party, R. 64), appellant testified that he did not know of any Communists in the Progressive Party (R. 98-9, 49); that to his knowledge the Progressive Party was not manipulated by Communists (R. 98); and that he had no knowledge of any connection between the Communist Party and the Progressive Party or of any influence exercised by the Communist Party or by Communists over the Progressive Party (R. 49-50; see also R. 36). There was no showing that the Progressive Party or the Progressive Citizens of America had ever used or advocated force or violence to overthrow the government, that said organizations were "subversive organizations" within the meaning of

the New Hampshire statutes, or that said organizations were otherwise unlawful (see R. 13, 98, 131, 189, 218).[5]

Appellant refused to answer, expressly on First Amendment grounds (R. 35, 58-62; see also R. 68), certain other questions relating to the Progressive Party and the Progressive Citizens of America.

The questions and answers were as follows:[6]

> "Q. Was she, Nancy Sweezy, your wife, active in the formation of the Progressive Citizens of America?
>
> "A. I decline to answer the question on advice of counsel and for reasons stated by counsel . . .
>
> "Q. Was Nancy Sweezy then working with individuals who were then members of the Communist Party? . . .
>
> "A. I decline to answer the question on advice of counsel and for reasons stated by counsel." (R. 202; see R. 63).[7]

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[5]The Attorney General stated in argument before the Superior Court that he had information in his possession showing that five or more members of the Progressive Party, including some of its candidates for election, were or had been members of the Communist Party (R. 189-92; see also R. 36, 97-8). But even this information was never produced in the Sweezy hearing or before the courts (see R. 194).

[6]Again the quotations are from the proceedings before the Superior Court, and the page numbers following "see" refer to the Attorney General's proceedings where the questions were originally asked.

[7]In the original questioning by the Attorney General appellant answered this second question (as to whether Nancy Sweezy was working with members of the Communist Party), saying he did not know any Communist Party members in New Hampshire (R. 63-4). This was consistent with appellant's position throughout the Attorney General's hearings in answering questions about the Communist Party, but not about the Progressive Citizens of America or the Progressive Party except in relation to the Communist Party. Hence the inclusion of this question as being an unanswered one seems to have been an oversight. In any event appellant is ready to repeat his answer if the Attorney General so desires.

"Q. Was Charles Beebe active in forming the Progressive Citizens of America?

"A. I decline to answer the question on advice of counsel and for reasons stated by counsel.

"Q. Did he work with your present wife—Did Charles Beebe work with your present wife in 1947?

"A. I decline to answer the question on advice of counsel and for reasons stated by counsel.

"Q. Was he then a member of the Communist Party. . . .

"A. Mr. Wyman, I told you that I didn't know any members of the Communist Party then or later." (R. 202-3; see R. 64).

"Mr. WYMAN. Yes. 'Mr. Sweezy, where and when did you first know Abraham Walenko?'

"The WITNESS. Want me to read the answer?

"Mr. WYMAN. No, I will read the answers till we get down to the point.

"Answer. 'I think it was in Manchester in 1948 sometime. Question. You don't remember just where you first met him? Answer. No. Question. Have you been to his house in Weare? Answer. Yes. Question. When did you go to his house in Weare? Answer. During 1948. Question. Did it have anything to do with the Communist Party? Answer. No.'

"Q. Did it have anything to do with the Progressive Party?

"A. I decline to answer the question on advice of counsel and for reasons stated by counsel." (R. 203; see R. 67-8).

"Q. Was Charles Beebe active in the Progressive Party in New Hampshire? . . .

"A. I decline to answer the question on advice of counsel and for reasons given by counsel." (R. 205; see R. 99).

Following the hearings the Attorney General, on June 11, 1954, filed a petition with the Superior Court setting forth certain questions appellant had refused to answer and praying that these questions be propounded to appellant by the Court (R. 3-11). The Superior Court, after hearing argument, ruled that appellant must answer the questions relating to his lectures at the University of New Hampshire and to the Progressive Party and the Progressive Citizens of America, but not those relating to opinion and belief (R. 193-5). Appellant was then called as a witness and the Attorney General repeated the questions, to the extent allowed under the Court's ruling (R. 201-8). Appellant persisted in his refusal to answer and the Superior Court thereupon ordered that appellant be "found and adjudged in contempt of this Court" and "committed to the County Jail and there remain until purged of contempt" (R. 208). Appellant was then admitted to bail (R. 208).

Upon appeal the Supreme Court of New Hampshire affirmed the order of the Superior Court, holding that the questions at issue were relevant to the Attorney General's investigation and were not precluded by the First and Fourteenth Amendments of the United States Constitution or by the due process clause of the Fourteenth Amendment (R. 210-22).

On April 4, 1956, following this Court's decision in *Pennsylvania* v. *Nelson*, 350 U. S. 497, appellant filed a further motion for rehearing urging that the New Hampshire statutes involved were invalid as the field had been pre-empted by Federal legislation (R. 224). On April 19, 1956 the New Hampshire Supreme Court denied this motion without opinion (R. 209).

On June 8, 1956 the New Hampshire Supreme Court in a *per curiam* opinion decided *Kalin* v. *Wyman*, reprinted in Appendix B, *infra*, pp. 76-7. In this case, brought by a third witness in the Attorney General's investigation, the Court ruled expressly that the New Hampshire statutes here involved were not invalid

by reason of Federal pre-emption of the field despite this Court's decision in *Pennsylvania* v. *Nelson*. "If state investigation of subversive activities is to be prohibited," said the New Hampshire Supreme Court, "a declaration to that effect must come from higher authority than this Court."

SUMMARY OF ARGUMENT

I

The questions here presented were properly raised under New Hampshire Law and were passed upon by the New Hampshire Supreme Court. The First Amendment issues (Questions 1 and 2) were raised from the beginning, pressed in the New Hampshire Superior and Supreme Courts, and expressly decided by those Courts. The due process issue (Question 3) was raised in the New Hampshire Supreme Court and also expressly decided by that Court.

The pre-emption issue (Question 4) was not raised until the further motion for rehearing, which was denied without opinion. Under the circumstances, however, this was an appropriate and timely method of raising the issue and the New Hampshire Supreme Court, following its liberal practice on raising constitutional issues, would normally pass on the merits of a question thus presented. That it actually did so here is evidenced by a Certificate of that Court, issued January 9, 1957, certifying that it considered and decided the pre-emption issue (App. C; *infra*, p. 78). We therefore submit that this Court has jurisdiction. *Herb* v. *Pitcairn*, 324 U. S. 117, 127-8; *Lisenba* v. *California*, 314 U. S. 219, 221-2; *Cincinnati Packet Co.* v. *Bay*, 200 U. S. 179, 182; *Whitney* v. *California*, 274 U. S. 357, 360-2.

II

The New Hampshire statutes, construed to require appellant to answer the questions concerning his lectures at the University

of New Hampshire, violate appellant's right to freedom of speech under the First and Fourteenth Amendments.

The destructive impact upon freedom of political expression arising from legislative investigations into political affairs has been abundantly demonstrated over the past several decades. It is now clear that this power of legislative investigation is limited by the First Amendment. *U. S.* v. *Rumely*, 345 U. S. 41; *Quinn* v. *U. S.*, 349 U. S. 155. This limitation applies to state as well as federal legislative investigations.

In *Quinn* v. *U. S.* this Court announced the principle that the power of legislative inquiry does not extend to an area in which the government concerned is forbidden to legislate. 349 U. S. at 161. This principle excludes areas where legislation would be forbidden by the First Amendment. Yet it is precisely these areas which the Attorney General seeks to enter here. Appellant answered all questions relating to the use or advocacy of force or violence, and all questions in the borderline area of Communist Party membership, activity and advocacy. But the Attorney General pressed beyond this into the areas of peaceful change and academic discussion. At this point the inquiry transgressed the bounds of legitimate state power and appellant was justified in invoking the First Amendment. *Stromberg* v. *California*, 283 U. S. 359; *DeJonge* v. *Oregon*, 299 U. S. 353; *Taylor* v. *Mississippi*, 319 U. S. 583.

Respondent has attempted to justify this clear invasion of appellant's rights upon the theory that appellant's writings and associations afford grounds for probing into the contents of his lectures; and also that respondent was entitled to test by cross-examination appellant's statements that he did not advocate force and violence. Neither argument can justify respondent's action here. To permit inquiry into protected areas upon the grounds urged would, in practice, open the whole field of political activity and association to legislative inquiry and effectively nullify the First Amendment as a limitation.

Nor can the action of the Attorney General in propounding these questions be sustained on any other standard for applying First Amendment limitations to the power of legislative inquiry. Whether one applies a literal interpretation of the First Amendment, the clear and present danger test, or a balance of interests test the Attorney General's questions would be precluded.

III

The attempt to force appellant to answer the questions concerning the Progressive Party and the Progressive Citizens of America violated appellant's rights under the First and Fourteenth Amendments for substantially the same reasons. The inquiry clearly entered an area foreclosed to state legislation by the First Amendment. Appellant answered all questions relating to the use or advocacy of force or violence and to the Communist Party. The Attorney General attempted to go far beyond this by probing into the peaceful and legitimate activities of political organizations not shown to have engaged in any illegal activity. Such questions are clearly precluded by the "area" test of the *Quinn* case and by other standards of First Amendment limitation.

IV

The New Hampshire statutes also contravene the due process clause of the Fourteenth Amendment in that the power conferred upon the Attorney General is stated in such vague and uncertain language that it is impossible to ascertain its meaning or limit its scope to situations properly within state authority. The Attorney General's power to inquire whether there are "subversive persons" in New Hampshire is particularly sweeping because the New Hampshire Supreme Court has interpreted that term to include persons engaged in specified conduct "whether or not done 'knowingly and willfully'." *Nelson* v. *Wyman*, 99 N. H. 33, 39. The

result, as evidenced by the roving inquiry presented in the record of this case, is that no resident of New Hampshire can be sure where the Attorney General's power ends; nor can he be sure that wholly innocent and well-intentioned conduct on his part will not subject him to investigation and exposure by the Attorney General.

Such uncertainty plainly fails to meet the requirements of due process that legislation must be framed in sufficiently clear terms to permit those subject to it to know "where this new standard of guilt would draw the line between the allowable and the forbidden . . ." *Winters* v. *N. Y.*, 333 U. S. 507, 519; *Lanzetta* v. *N. J.*, 306 U. S. 451; *Musser* v. *Utah*, 333 U. S. 95; *Connally* v. *General Construction Co.*, 296 U. S. 385. The statutes likewise violate due process by arbitrarily imposing sanctions upon persons for innocent membership in "subversive" organizations. *Wieman* v. *Updegraff*, 344 U. S. 183.

V

The New Hampshire statutes are invalid because they deal with the field of national sedition, an area pre-empted by existing Federal legislation. *Pennsylvania* v. *Nelson*, 350 U. S. 497.

The validity of the enabling resolution under which the Attorney General is empowered to investigate (N. H. Laws 1953, Ch. 307) depends upon the validity of the Subversive Activities Act of 1951 (N. H. Laws 1951, Ch. 193). But the 1951 Act, to the extent that it furnishes the basis for the investigation here undertaken, is clearly invalid because it deals only with matters of national sedition. *Pennsylvania* v. *Nelson*, *supra*. Hence the investigation is unauthorized and invalid.

The same result follows even if the 1953 resolution is not dependent on the 1951 Act. The resolution is valid only as an aid to legislation; and since legislation in this field is precluded by

Pennsylvania v. *Nelson* the resolution also fails. If, on the other hand, the resolution has its source in some power of the state legislature other than as an aid to legislation then it operates as a regulation; and regulation in this field through the sanctions of the investigatory process is precluded by *Pennsylvania* v. *Nelson* for the same reasons as state criminal regulation in this field is precluded.

POINT I

THE QUESTIONS HERE PRESENTED WERE PROPERLY RAISED UNDER NEW HAMPSHIRE LAW AND WERE PASSED UPON BY THE NEW HAMPSHIRE SUPREME COURT. THIS COURT THEREFORE HAS JURISDICTION TO CONSIDER THEM.

As noted above, the order of this Court issued October 8, 1956, postponed further consideration of the question of jurisdiction to the hearing of the case on the merits (R. 230). We submit that all the questions here involved were properly raised in the New Hampshire courts and passed upon by the New Hampshire Supreme Court, and that this Court has jurisdiction to consider them.

(1)

The First Amendment issues, both as to questions dealing with the lectures at the University of New Hampshire (Question 1) and the questions dealing with the Progressive Party and the Progressive Citizens of America (Question 2); were raised expressly by appellant as a ground for refusing to answer before the Attorney General (R. 35, 62, 70, 79-80, 107). The issues were likewise expressly raised before the Superior Court in appellant's answer to the Attorney General's petition (R. 17), in argument of counsel for appellant before the Court (R. 137, 198-9), and at the time the questions were again propounded to appellant in the Superior Court (R. 201-8). The Superior Court overruled these objections (R. 195, 208). The First Amendment issues were thereafter raised in briefs and argument before the New Hamp-

shire Supreme Court.[8] And that Court expressly passed on these issues (R. 220-2).

(2)

The Fourteenth Amendment due process issue (Question 3) was first raised by appellant in his brief before the New Hampshire Supreme Court. Appellant argued that, "while due process cannot be defined with precision, and each case must stand on its own facts (*Fitzgibbons* v. *Hancock*, 97 N. H. 162, 164), procedural regularity requires that the 1951 and 1953 Acts as construed and applied be held unconstitutional, since they leave room for the play and action of purely personal and arbitrary power." The Supreme Court of New Hampshire expressly ruled on the due process issue in its opinion, saying:

> "The resolution authorizing the investigation is not so vague and lacking in standards as to violate the defendant's right to due process. . . . The sections of the act to which reference is made [the 1951 Act], and with which the circumstances of this case are concerned, define subversive organizations and persons (RSA :555, 1) and the acts of advocacy and teaching (*Id.* 2(b)) and participation in a subversive organization (*Id.* 2(d)) which are made criminal with sufficient clarity to satisfy the requirements of due process. *Nelson* v. *Wyman*, 99 N. H. 33." (R. 219-220).

(3)

The issue with respect to whether the State of New Hampshire is precluded by the existence of Federal power and statutes from

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[8]Appellant's Bill of Exceptions took a general exception to the rulings of the Superior Court, not referring specifically to constitutional issues (R. 1-3). Under New Hampshire practice the failure to mention specific constitutional objections in the Bill of Exceptions did not preclude appellant from raising any such issues in the New Hampshire Supreme Court. See, *e.g.*, the procedure with reference to the due process issue, *infra*.

legislating or investigating in the area of sedition (Question 4) was not raised until the second (or further) motion for rehearing (R. 224), which was denied without opinion (R. 209). The circumstances were these:

Prior to the second hearing before the Attorney General (the first at which appellant was represented by counsel) the Supreme Court of New Hampshire decided *Nelson* v. *Wyman*, 99 N. H. 33, referred to above. This case, arising out of the same investigation being conducted by the Attorney General but involving another witness, squarely ruled against the contention that the investigation was precluded by Federal occupancy of the field of sedition. 99 N. H. at 48-9 The issue was thus settled adversely to appellant by the highest court of the State, and counsel for appellant did not raise it again in the Superior Court.

After the Supreme Court of New Hampshire had decided the instant case, and after it had denied the first motion for rehearing, this Court decided *Pennsylvania* v. *Nelson*, 350 U. S. 497. The decision in the Pennsylvania *Nelson* case for the first time opened the possibility that the New Hampshire Supreme Court would revise or reconsider its position in the New Hampshire *Nelson* case. Counsel for appellant immediately filed the further motion for rehearing based solely on this Court's decision in the Pennsylvania *Nelson* case.

This further motion for rehearing conformed to the New Hampshire practice for presenting an issue of this nature under the circumstances involved. The New Hampshire Supreme Court has frequently passed on constitutional issues raised for the first time in that Court. As just pointed out, it followed this practice in passing on the due process issue in this case, raised for the first time in appellant's brief. It has also followed an extremely liberal practice in allowing constitutional issues to be raised at any time

in the proceedings before it."[9] Thus the further motion for rehearing was an appropriate and timely method of calling the Court's attention to the new issue brought into the case by this Court's decision in *Pennsylvania* v. *Nelson*, and the normal practice of the New Hampshire Supreme Court was to consider such issues on the merits.

That the New Hampshire Supreme Court, in denying the further motion for rehearing, did in fact pass on the merits of the pre-emption issue is now completely clear from the Certificate issued by the Court on January 9, 1957, at appellant's request. This Certificate, which has been filed with the Clerk of this Court, is printed in full in Appendix C to this brief (*infra*, p. 78). It states:

> "This is to certify that the Supreme Court of the State of New Hampshire considered upon its merits the further motion for rehearing filed on behalf of the defendant Paul M. Sweezy in the action entitled, *No. 5395, Louis C. Wyman, Attorney General* v. *Paul M. Sweezy*. This motion raised the question of supersession of RSA Chapter 588 and Chapter 307, Laws of 1953 by federal occupation of the field to the exclusion of parallel state legislation after *Commonwealth of Pennsylvania* v. *Steve Nelson*, 350 U. S. 497 (1956) was decided. After due consideration, the Court unanimously denied the further motion for rehearing because it is not

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[9]Thus in *Ashuelot R. R. Co.* v. *Elliot*, 58 N. H. 451, the Court entertained and passed upon a motion for rehearing involving a constitutional issue that had been decided several years before. In *State* v. *Rheaume*, 80 N. H. 319, the Court stated the principle that "the constitutionality of a statute authorizing a prosecution involving the punishment for crime may be questioned at any stage of the proceedings" (80 N. H. at 322). And in *Duncan* v. *Jaffrey*, 98 N. H. 305, where the plaintiff sought to raise a constitutional issue as to the validity of a state tax but brought the wrong form of proceeding, the Court nevertheless proceeded to a decision on the merits. See also *Stebbins* v. *The Lancaster Ins. Co.*, 59 N. H. [illegible]; *Farrell* v. *Johnson*, 86 N. H. 530.

satisfied that the *Nelson* case, *supra*, purports to preclude a state legislative investigation of subversive activities. See, *Gordon Kahn* v. *Louis C. Wyman, Attorney General*, decided June 8, 1956, 100 N. H."

In view of these circumstances, and particularly in view of the Certificate, we submit that this Court has jurisdiction to decide the pre-emption issue. *Herb* v. *Pitcairn*, 324 U. S. 117, 127-128; *Lisenba* v. *California*, 314 U. S. 219, 221-222; *Cincinnati Packet Co.* v. *Bay*, 200 U. S. 179, 182; *Whitney* v. *California*, 274 U. S. 357, 360-362.

Furthermore the precise views of the New Hampshire Supreme Court on the issue are not in doubt. On June 8, 1956, subsequent to the denial of appellant's further motion for rehearing, the Court passed again—this time with an opinion—upon the pre-emption issue. *Kahn* v. *Wyman*, 100 N. H. ——, reprinted in Appendix B, *infra*, p. 76. In that case a third witness called by the Attorney General in the course of his investigation filed a petition in the Superior Court to quash the subpoena, basing his motion on *Pennsylvania* v. *Nelson*. The New Hampshire Supreme Court upheld the lower court's dismissal of this petition, saying:

"In the present case, however, the issue is whether or not the *Nelson* case precludes the Legislature of the state from conducting investigations of subversive activities within the state as distinct from providing for the prosecution of crimes. While it is not clear what a state legislative investigation of subversive activities may accomplish at the present time, we are not satisfied that the *Nelson* case, *supra*, purports to preclude such an investigation. If state investigation of subversive activities is to be prohibited, a declaration to that effect must come from higher authority than this court. We know of no decision of any court which has ruled that the investigative aspects of state subversive activities legislation have been preempted by the federal government. We therefore conclude that the Trial Court was correct in dismissing this petition."

It should be added that respondent in this case does not contend that the Supreme Court of New Hampshire did not pass on the pre-emption issue or that this Court should decline jurisdiction for that ground. See Motion to Dismiss, p. 10.[10]

[10] It will be noted also that the issue is before the Court in a somewhat different aspect, in connection with the First Amendment issues. (See *infra*, pp. 40-1).

POINT II

THE NEW HAMPSHIRE STATUTES, CONSTRUED TO REQUIRE APPELLANT TO ANSWER THE QUESTIONS CONCERNING HIS LECTURES AT THE UNIVERSITY OF NEW HAMPSHIRE, CONTRAVENE THE FIRST AMENDMENT AS APPLICABLE TO STATE ACTION UNDER THE FOURTEENTH AMENDMENT.

The effort to force appellant to answer the questions concerning his lectures at the University of New Hampshire presents the issue of freedom of speech in one of its most significant and sensitive aspects—the area of academic freedom. In essence the attempt of the New Hampshire legislature, acting through its agent the Attorney General, was to bring the potent sanctions of the state investigatory power to bear in hampering and repressing academic discussion of socialist and Marxist theory. Such conduct on the part of a state government runs directly counter to the principles of free expression which underlie our democratic form of government and which are embodied in the First and Fourteenth Amendments as consistently interpreted by the decisions of this Court.

A. The Power of State Legislative Investigation is Limited by the First Amendment as Incorporated in the Fourteenth Amendment.

The Supreme Court of New Hampshire expressly acknowledged that "the inquiries authorized by the Legislature in connection with this investigation concerning the contents of the lectures . . . undoubtedly interfered with the defendant's free exercise of those liberties" of speech and association guaranteed by the Federal Constitution (R. 220). Of this there can be no question. But it is essential to recognize—as the New Hampshire Court did not—the full extent of such interference and its implications for political freedom in the United States today.

Our experience during the last several decades has fully demonstrated the destructive effect of an unchecked power of legislative inquiry upon freedom of political expression. The power to call persons before an official investigating body, to subject them to the burdens and strains of justifying their political ideas or conduct before experienced and hostile interrogators, and to expose them to the impact of an aroused public opinion, furnishes a legislative committee with sanctions of striking effectiveness in curtailing political activities, associations and opinions. Modern legislative committees, through improved methods of investigation, more expert manipulation of publicity, larger and permanent staffs, and similar advances in technique, have enormously enlarged the original power and given it in effect an institutional framework. These developments have taken place at a time when the individual, by reason of greater economic dependence and other pressures to conform, has become far more vulnerable to the kind of sanctions wielded by a legislative committee. The result has been, it is fair to say, that within the last two decades legislative investigating committees have had as great or greater impact upon freedom of political expression in the United States as any other government institution or measure.

The extent to which the power of legislative investigation can and does abridge freedom of political expression has been stressed by many students of the problem. In a recent study in the very area of concern here—freedom of thought and action in the academic community—Professor Robert M. MacIver summarized the effect of legislative committee investigations in the following words:

> "Finally, they have been largely responsible for the spirit of apprehension and the sense of intimidation that, according to a considerable amount of testimony, has invaded the halls

of learning." MacIver, *Academic Freedom in Our Time* (1955), p. 49.[11]

What has not been so generally recognized is the extent to which the power of legislative investigation, when employed as a sanction to control political activity and opinion, violates the most fundamental structural principles of American government. It does so because it combines legislative, executive and judicial functions in an extreme and dangerous form. An investigating committee exercises legislative powers in that it may deal with broad issues of policy, extending over the whole field of potential legislative action, and may be given authority to study and formulate new measures in any such area. It exercises executive functions in its power to initiate proceedings in a particular situation or against a particular person, to investigate facts, to commence what amount to a prosecution, and to conduct such prosecution through the presentation of evidence by members of its own staff. It exercises judicial functions in that it determines what evidence will be admitted, makes a formal judgment on the case, and promulgates an official decision. All of this takes place in the absence of most

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[11] For similar judgments of the impact of legislative investigations upon freedom of thought and expression in the United States, see Lawrence H. Chamberlain, *Loyalty and Legislative Action* (1951), pp. 203-6, 216-21; Walter Gellhorn, *The States and Subversion* (1952), pp. 385-8; Robert K. Carr, *The House Committee on Un-American Activities* (1952), Ch. XII; Alan Barth, *Government by Investigation* (1955), Ch. I, pp. 163-79; Telford Taylor, *Grand Inquest* (1955), Ch. VI and X; Robert E. Cushman, *Civil Liberties in the United States* (1956), pp. 177-201; Zechariah Chafee, Jr., *The Blessings of Liberty* (1956), pp. 84, 234-5, 242-5, 250-2. A recent account of the operations of legislative committees, citing the major decisions and literature, may be found in Comment, *Legislative Inquiry Into Political Activity: First Amendment Immunity From Committee Interrogation*, 65 Yale L. J. 1159 (1956).

of the procedural protections against arbitrary or unjust action available in ordinary judicial or administrative proceedings.[12]

This aspect of legislative investigations in dramatically illustrated by the present case. Here the chief prosecuting official of the state is acting as agent of the legislature in the conduct of the investigation.

One of the main efforts of the framers of the Constitution was to avoid the very kind of dangerous assemblage of powers which now appears in the recent development of legislative committee investigations. The basic separation of legislative, executive and judicial functions, and the whole system of checks and balances, were devised to prevent concentration of power, with its attendant abuse, such as had already appeared in some of the state legislatures. The specific prohibition against bills of attainder reflected the same purpose. And this Court has consistently interpreted the Constitution in this spirit. Thus, in the first major treatment of the power of legislative inquiry the Court recognized the danger arising from legislative incursions into the judicial realm and rejected the asserted power on this ground. *Kilbourn* v. *Thompson*, 103 U. S. 168, 182, 190-6. Again, in *In re Oliver*, 333 U. S. 257, the Court found the combination of prosecuting and judicial functions, operating in the absence of basic safeguards, a plain infringement of fundamental constitutional rights. *Cf. Tenney* v. *Brandhove*, 341 U. S. 367.

The present development of legislative committees brings to the fore again this basic problem in the vital field of political expression. The ordinary rules of relevancy or pertinency cannot afford adequate protection. Considered by themselves, these rules would allow virtually unlimited scope to a legislative committee operating under a carefully drafted enabling resolution. Under the

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[12]For discussion of this aspect of the problem see Alan Barth, *Government by Investigation* (1955), esp. Ch. I; Telford Taylor, *Grand Inquest* (1955), Ch. V.

guise of looking for "subversives," a legislative committee could employ the now highly developed investigating process to search out and punish nearly every unorthodox political opinion, activity or association. This tendency toward expansion under the ordinary rules of legal relevancy has marked the progress of legislative committees in recent years, as numerous observers have documented in detail.[13]

Plainly it would be wholly inconsistent with all our notions of balanced and orderly government to permit an institution combining all forms of state power to apply the devastating sanctions of official publicity and exposure over a nearly limitless field of operation. This Court, even in days before the full implications of the legislative power to inquire had become manifest, has consistently taken the position that the power is subject to limitation. *Kilbourn* v. *Thompson*, 103 U. S. 168, 190, 194-5; *McGrain* v. *Daugherty*, 273 U. S. 135, 173-4; *Sinclair* v. *U. S.*, 279 U. S. 263, 292. In the area with which we are concerned here the most significant restriction is that embodied in the First Amendment.

That the power of legislative inquiry is limited by the countervailing command of the First Amendment is, indeed, no longer open to doubt. In *U. S.* v. *Rumely* the Court expressly recognized that the First Amendment constituted a limitation upon legislative powers to investigate, although it abstained "from marking the boundaries of congressional power or delimiting the

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[13] See, *e.g.*, the materials collected in the dissent of Judge Clark in *U. S.* v. *Josephson*, 165 F. 2d 82 (C.A. 2), and in the dissent of Judge Edgerton in *Barsky* v. *U. S.*, 167 F. 2d 241 (C.A.D.C.); August R. Ogden, *The Dies Committee* (1945); Robert K. Carr, *The House Committee on Un-American Activities* (1952); Walter Gellhorn, *The States and Subversion* (1952), pp. 7-18, 61-88, 288-312, 328-46, 385-8; Telford Taylor, *Grand Inquest* (1955), pp. 159-73; Zechariah Chafee, Jr., *The Blessings of Liberty* (1956), pp. 85-7; *U. S.* v. *Rumely*, 345 U. S. 41, 54.

protection guaranteed by the First Amendment" (345 U. S. 41, 48). And in *Quinn* v. *U. S.*, the Court took pains to point out:

> "But the power to investigate, broad as it may be, is also subject to recognized limitations. It cannot be used to inquire into private affairs unrelated to a valid legislative purpose. Nor does it extend to an area in which Congress is forbidden to legislate . . . Still further limitations on the power to investigate are found in the specific individual guarantees of the Bill of Rights . . ." 349 U. S. 155, 161, footnotes omitted.

It is true that these cases involved Federal rather than state power of legislative inquiry. But it can hardly be doubted that the requirements of the First Amendment, made applicable to the states through the Fourteenth Amendment, impose comparable or identical limits on state power.

The exact point at which the First Amendment comes into play as a limitation upon legislative investigating authority has not been clearly marked out. We consider below several alternatives. But wherever that line may eventually be drawn, we submit that the Attorney General of New Hampshire has overstepped it in this case.

B. The Questions Dealt With An Area of Political Expression Clearly Protected By The First Amendment and Hence Excluded From the State's Power of Inquiry.

(1)

The clearest and simplest statement of the point at which the First Amendment cuts across the power of legislative inquiry is that enunciated in the *Quinn* case: The power does not extend to an area in which the government is forbidden to legislate. 349 U. S. at 161. This doctrine clearly applies to state investigations, at least where the investigating process itself, as just demonstrated, constitutes an infringement upon First Amendment rights. The

principle thus excludes state investigation into areas where state legislation would be prohibited by the First and Fourteenth Amendments.

While application of this principle to a concrete situation might be difficult in some cases, it is not so here. The questions propounded by the Attorney General with respect to appellant's lectures clearly embrace a field of political expression where the First Amendment prohibits legislation. The New Hampshire statutes which purport to authorize such interrogation must therefore be held to violate the constitutional guarantee.

No one questions the power of a state legislature, subject to pre-emptive Federal power, to enact legislation prohibiting the use of force or violence to overthrow, destroy or alter constitutional forms of government. We may assume further that, at least under the conditions described in *Dennis* v. *U. S.*, 341 U. S. 494, and again subject to pre-emptive Federal power, a state may proscribe the advocacy of force or violence for such purposes, whether by individuals or by organizations. Into these areas the legislative power of inquiry, under the "area" test, extends. But the state clearly has no power, by reason of the First and Fourteenth Amendments, to prohibit or harass political activity or expression which is directed toward political or social change through peaceful democratic methods. *Stromberg* v. *California*, 283 U. S. 359; *DeJonge* v. *Oregon*, 299 U. S. 353; *Taylor* v. *Mississippi*, 319 U. S. 583. Nor has it any power to prevent academic discussion of political and social issues, even where the discussion may relate to doctrines of force and violence. *Dennis* v. *U. S.*, 341 U. S. 494, 501-2. From these sectors the state's investigating power, with its enormous capacity for restraint and suppression, is excluded.

Yet it is precisely these forbidden areas that the Attorney General of New Hampshire seeks to enter in pressing for an answer to the questions here at issue. Appellant answered all questions relating to the use or advocacy of force or violence.

Appellant also answered all questions in the borderline area of Communist Party membership, activity and advocacy, in deference to the legislative finding in the 1951 Act that the Communist Party advocated force and violence. Having received an answer upon these issues, the Attorney General proceeded to inquire into the area of peaceful and academic discussion—what the contents of the lectures were, whether appellant had stated that socialism was inevitable, whether he had advocated Marxism, whether he espoused the theory of dialectical materialism. At this point the inquiry had plainly transgressed the bound of legitimate state power and appellant was justified in invoking the First and Fourteenth Amendments.

The distinction which appellant invoked here—between political activity conducted through normal democratic procedures and political activity relying upon force or violence or similar anti-democratic methods—is fundamental to the maintenance of free political expression in a democracy. Particularly in times such as the present, when internal and external forces have led both Federal and state governments to adopt new and far-reaching controls over political activity in the interest of security, it is essential that the distinction be clearly recognized and firmly enforced. If the First Amendment is to have any meaning the government must not be allowed to use its legitimate interest in protecting existing institutions against change by force or violence as an excuse for preventing peaceful and lawful discussion of change. And it is as important that the sanctions of legislative investigation be not employed for this purpose as it is that outright prohibition through criminal sanctions be confined to its proper field.

The failure of the New Hampshire Supreme Court to hold the state legislature within the traditional bounds clearly resulted in the curtailment of legitimate political expression in the case now before the Court. Appellant's right to discuss the principles of socialism without state interference or harassment was gravely

impaired. That the Attorney General's action had a serious effect upon faculty members and students at the University of New Hampshire cannot be questioned. The simple fact is that freedom of discussion throughout the whole academic community was deliberately and directly abridged. The First Amendment was designed to prevent the use of government power for such purposes.

(2)

Respondent has attempted to justify the clear invasion of protected rights in this case upon two theories. One is that appellant's previous writings and associations afford grounds for probing into the contents of his lectures. The other is that respondent was entitled to test by further questions, in the nature of cross-examination, appellant's statements that he did not advocate force and violence in his lectures. Neither theory, we submit, can justify the Attorney General's line of inquiry here. On the contrary, to permit such incursions into protected areas of free speech upon the grounds urged would strip the First Amendment of its force and leave the power of legislative inquiry virtually without limitation.

The argument based upon appellant's writings can be disposed of summarily. Out of appellant's numerous and extensive publications respondent cites one extract which he asserts "comes as close to indirect advocacy of force and violence as it's possible to come" (R. 127; see also Motion to Dismiss, p. 7). The extract appears in the record at pages 82-3. The passage contains an analysis of the use of violence in political affairs generally, concluding that it has more justification where employed to further socialist objectives than where used in support of capitalist objectives. But it condemns violence in both systems: "We hate it, as we hate all violence" (R. 83). There is no intimation whatever that appellant is urging or suggesting the use of violence to overthrow government in the United States. The passage is

plainly within the realm of academic discussion and can afford no justification for opening up the whole area of appellant's lectures and speeches to the Attorney General's interrogation.[14]

As to appellant's associations respondent has relied upon the fact that, as appellant freely testified, he was a member or participated in the activities of a number of organizations on the United States Attorney General's list (promulgated under the Federal loyalty orders) or cited by the House Committee on Un-American Activities as "subversive" (R. 23-39, 52-3, 86-92).[15] There is no suggestion that any of these organizations ever engaged in force or violence or advocated it or otherwise participated in any unlawful activity. Nor can any inference of unlawful activity on the part of appellant be drawn from his association with such organizations. See *Schneiderman* v. *U. S.*, 320 U. S. 118; *U. S.* v. *Remington*, 191 F. 2d 246, 252 (C.A. 2); *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123; *Wieman* v. *Updegraff*, 344 U. S. 183. In any event no one would assert that association with such groups, even if they were engaged in illegal activity, can deprive appellant of his right to express his views in accordance with democratic procedures or can deprive his hearers of the right to listen to such discussion. This is the clear ruling of *DeJonge* v. *Oregon*, 299 U. S. 353. See also *Herndon* v. *Lowry*, 301 U. S. 242; *Stromberg* v. *California*, 283 U. S. 359.

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[14] The Attorney General also supports his argument by references to a translation made by appellant of a pamphlet by Friedrich Engels entitled *Principles of Communism* (R. 74-7, 164-5), and the quotation by appellant in his *Monthly Review* of an extract from an article by Archibald MacLeish originally published in the *Atlantic Monthly* (R. 54-5, 167-9; see also R. 169-70). Neither reference can furnish the slightest support for any contention that appellant advocated force and violence. For a statement of appellant's views on the subject see R. 55, 109-10.

[15] Appellant testified that at the time of the hearings he was not a member of any organization on the Attorney General's list (R. 24, 87, 96).

To hold that appellant loses his rights under the First Amendment upon this ground would mean that millions of Americans who participated at one period or another in the activities of hundreds of organizations so listed would thereby be compelled to answer to legislative committees as to every phase of their political life and expression. No such sweeping powers can be accorded legislative committees within the framework of the First Amendment.

Respondent's other contention is that the questions asked were proper in order to test the validity of appellant's statement that he did not advocate overthrow of the government by force and violence in his lectures. In his Motion to Dismiss the Attorney General described the nature and purpose of his proposed cross-examination in the following terms:

> "Did this witness tell students at the University of New Hampshire in this lecture that Red China was a land of peace, and Formosa a land of war; that the Soviet Union and world communism wanted peace, whereas the barons of Wall Street want war; that the only way to assure world peace was to lay down our arms and become one world with communism, living under a socialistic, classless society with the profit motive removed? Was all of this, if said (and no contention is made here that it was in fact said, but these propositions are discussed merely for reaching the possibilities raised by the Appellant himself) was it all part of a plan to orient our youth toward abolition of a constitutional republic with approval of violence for these purposes but not of violence in defense of capitalism?" (p. 11).

We submit that "cross-examination" on such issues, under the guise of discovering whether appellant had advocated force and violence in his lectures, clearly abridges appellant's rights under the First Amendment.

The record contains no evidence from any source that appellant had avocated force and violence in his lectures. Appellant repeat-

edly and unequivocally denied it. The only justification the Attorney General can advance for pursuing further the subject matter of the lectures is that one extract from appellant's writings plus his associations might make it possible that appellant through a "subtle approach" had advocated force and violence "by indirection" (Motion to Dismiss, pp. 12, 9). It is true that the New Hampshire Supreme Court did find that the questions appellant refused to answer were "relevant" under the enabling statutes. But this holding does not meet the issue here. Whether relevant or not under the New Hampshire statutes the questions could not be asked if they fell within the ban of the First Amendment.

This is the usual rule pertaining to cross-examination. Relevant cross-examination would not be permitted, for example, where it conflicted with the right of a witness to remain silent by reason of the privilege against self-incrimination under the Fifth Amendment. Nor would it overcome such countervailing rights as are embodied in the attorney-client privilege, or the husband-wife privilege. The same result follows where the cross-examination would impinge upon First Amendment rights.

Cross-examination as a means for establishing the validity of answers given in a legislative inquiry is not of such vital importance in the finding of facts essential for legislative action that it can override constitutional limitations. Nor is it the only method open to a state for assuring truthfulness in answers or testing their accuracy. Specifically, a prosecution for perjury is an adequate and constitutional device for achieving this purpose and assuring the integrity of the process of legislative investigation.

The issue becomes wholly clear, we submit, if the implications of the Attorney General's position are examined. On his theory of the First Amendment he could call any person in New Hampshire (or at least any person who had been associated with a listed organization) and ask the question: "Have you ever advocated overthrow of the government by force or violence?" If the wit-

ness answered "No," then the Attorney General, in order to "test" the answer, could require the witness to testify about all his statements concerning Red China, the Korean War, the Hungarian revolution, the Middle East, economic planning or almost any other political subject. There would be no limit to the possible interrogation, regardless of its effect upon free expression and association.

Furthermore, the range of inquiry thus opened up would not be confined to the area of "subversive activities." Thus, on respondent's theory a legislative committee in a southern state could call a group of Negroes before it and ask whether they had ever engaged in champerty or maintenance. Upon receiving a negative answer, the committee could then "test" the reply by forcing the witnesses to answer an exhaustive series of questions concerning their statements on the segregation issue, their relations with the National Association for the Advancement of Colored People, and a host of similar matters. Surely no such inquisition could be consistent with the protections of the First Amendment.

(3)

It should be noted that the treatment of the First Amendment question in the decision of the New Hampshire Supreme Court was both incorrect in theory and did not reach the issues of the case. That Court took the position that a state legislature may conduct an inquiry whenever in its judgment it finds that a "danger is reasonably represented as potential" (R. 221). This doctrine is patently in conflict with the principle of the *Quinn* case that the power of investigation may not extend to an area foreclosed to legislation under the First Amendment. Furthermore no "danger" within the power of the state to control—whether clear, present or potential—arises from the speech of individuals seeking to discuss public issues by methods of peaceful persuasion. Hence the rule enunciated by the New Hampshire Court cannot control the issues here.

The New Hampshire Court, moreover, in applying the doctrine to the facts before it completely failed to reach the real problem. It ruled that the questions were relevant under the enabling statutes without considering First Amendment limitations. Then it ruled that the First Amendment did not prohibit inquiry into the potential danger of overthrow of the government by force or violence. But it never addressed itself to the issue of whether the First Amendment cut off at any point the questions now at stake, which did not directly relate to force and violence but went far beyond into other areas.

For similar reasons the inquiry here cannot be justified upon the theory that a state may restrict speech where the speech creates a clear and present danger of a substantive evil, and may therefore investigate to determine whether such a clear and present danger exists. The questions involved here did not deal with any "danger" the state had a right to prevent, but with peaceful discussion of political change. To bring such questions under the cover of inquiring into the existence of a clear and present danger from use or advocacy of force and violence is to expand the clear and present danger exception to a point where it would nullify the whole First Amendment protection. See the dissent of Judge Clark in *U. S. v. Josephson*, 165 F. 2d, 82, 97-8; *Attorney-General v. Colonial Sugar Refining Co.*, [1914] A.C. 237, 252-7.

(4)

There is a final reason why the First and Fourteenth Amendments prevent the State of New Hampshire from carrying its investigation into the area here involved. Such inquiry, as we have seen, seriously infringes freedom of expression. It can be justified, if at all, only if the state has a substantial legislative interest in the field of inquiry. If such interest is insubstantial or non-existent it clearly cannot outweigh or prevail against the protection afforded by the First and Fourteenth Amendments. See *U. S. v. Rumely*, 345 U. S. at 44, 46.

In this case the State of New Hampshire has no such legislative interest to interpose as a counterbalance to the principles of the First Amendment. Both the 1951 and the 1953 statutes dealt with the problem of sedition directed against the country as a whole. It was this problem also with which the Attorney General was specifically concerned in the investigation of appellant. Under the ruling of this Court in *Pennsylvania* v. *Nelson*, 350 U. S. 497, the field of national sedition is one foreclosed to state legislative action. Consequently the problem of accommodating "contending principles," as Mr. Justice Frankfurter expressed it in the *Rumely* case, disappears. The First Amendment remains as the single applicable principle and its mandate must prevail.[16]

C. The Questions Are Not Permissible Under Other Theories of the First Amendment's Limitation Upon Legislative Investigation.

In view of the clear statement of this Court in the *Quinn* case and because the area theory of limitation seems well designed to safeguard the values embodied in the First Amendment, we place our chief reliance upon that doctrine as disposing of the issues of this case. Other theories have been advanced, however, for fixing the point at which the First Amendment limits the power of legislative investigation and we therefore discuss them briefly. We submit that under any of these doctrines the questions asked by the Attorney General concerning appellant's lectures fall within the proscription of the First Amendment.

Literal Interpretation of the First Amendment

If we accept a literal interpretation of the First Amendment that a state may make *no* law abridging freedom of speech—then the issue is readily settled. For reasons already stated, the

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[16]For a more detailed discussion of the pre-emption issue as a separate ground of objection, see Point V, *infra*.

action of the New Hampshire legislature substantially abridges freedom of speech. And appellant would be clearly within his constitutional rights in refusing to answer.

The Clear and Present Danger Doctrine

A standard often used in delineating the application of the First Amendment is the clear and present danger test. Under this test, the government may impose restrictions upon speech only where the speech involved creates a clear and present danger of a substantive evil the government has a right to prevent. *Schenck* v. *U. S.*, 249 U. S. 47; *Dennis* v. *U. S.*, 341 U. S. 494.[17] The test would seem equally applicable to a restriction which takes the form of sanctions inherent in legislative investigations into speech as to a restriction which takes the form of a direct criminal prohibition of speech. Applying this test to the facts of this case the issue would be whether the speech inquired about—appellant's lectures at the University of New Hampshire—created a clear and present danger (or a probable danger) of overthrow of the government by force and violence.

There is no showing in this record suggesting the existence of such a danger. On the contrary the record contains the direct testimony of appellant that there was no advocacy of force and violence whatever. The only other evidence in the record on the point confirms appellant's statement (R. 159; 175, 177-9, 196-7). Appellant's prior writings and associations, upon which respondent relies, supply no inference that appellant ever advocated force or violence at the University of New Hampshire or anywhere else. On this state of the record, in the absence of some substantial ground for believing that force and violence were advocated in

[17] The prevailing opinion in the *Dennis* case accepted a modified formulation of the clear and present danger test. 341 U. S. at 510. For purposes of this case the difference, if any, does not appear material.

the lecture, there is no support for a contention that the speech created any kind of danger. All that took place, as far as the record shows, was academic discussion of socialism and this, as stated above, neither constitutes a "danger" to the state nor creates "a substantive evil" the state has a right to prevent.

Even if we assume—contrary to every indication in the record—that appellant's lectures did include advocacy of force and violence there would still be no showing sufficient to meet the test. Surely no one would contend that appellant's lectures on socialism, which he had been invited to give by a group of faculty members over a period of three successive years, could by any stretch of the imagination create a clear, present or probable danger of overthrow of the government by force or violence.

Balancing of Interests

Another theory of the First Amendment is that the interests of the state in restricting speech must be balanced against the social values in maintaining freedom of speech. As applied in this case the issue would be whether the interest of New Hampshire in obtaining information as a basis for legislation designed to prevent overthrow of the government by force and violence outweighed the social costs of interfering with freedom of discussion at the University and throughout the state. The various factors could be weighed in light of a presumption in favor of legislative action, or a presumption in favor of the First Amendment, or in the absence of any presumption.

Whatever the presumption may be, we believe that any such balance here must be struck in favor of preserving First Amendment rights. The value to the State of New Hampshire in framing anti-sedition legislation upon a basis of a knowledge of appellant's lectures on socialism seems small. In his Motion to Dis-

miss the Attorney General explained the interest of New Hampshire as follows:

> "Adolescents in most instances cannot be in a position to adequately evaluate doctrinal presentations either from experience in life or scholarly research. They are just not old enough to know whether it is really true that a nation is good or a political philosophy is good or whether they are evil. For an admitted Marxist to flatly state to assembled youth that socialism in the United States is inevitable, raises all manner of relevant questions particularly after the earlier characterizations by Appellant of what he meant by use of the term. It makes little difference that the statement may have been enveloped in the pedagogical pretense that it was set up as one man's point of view, knock it down if you can. It is certainly competent and entirely relevant to ask whether such a Marxist in fact explained to the class what he meant them to understand by the word 'Socialism'." (p. 8).

It is doubtful that a full exposure of this scene at the lecture would assist the New Hampshire legislature much in drafting valid legislation on sedition. As against this interest, such as it is, there must be set the impact upon the political health of the State in making serious academic discussion of socialism an occasion for official inquiry and public denunciation by the chief prosecuting official of the State acting as agent for the chief policy making organ of the State.

Furthermore, as pointed out above, under this Court's decision in *Pennsylvania* v. *Nelson*, 350 U. S. 497, the State of New Hampshire would have no power to legislate on the issues of subversion which the Attorney General was here undertaking to investigate.

In either event the balance must be struck in this case against the use of the investigating power and in favor of the First Amendment.[18]

D. Conclusion.

It should be emphasized that the issue here does not concern the extent of control which a state legislature may exercise over the curriculum of a state university or the qualifications for teachers at such a university.[19] Appellant was not a member of the faculty of the University of New Hampshire nor a state employee (R. 104). Except so far as the New Hampshire statutes dealt with the loyalty of state employees generally, they did not purport to deal with problems of educational policy. Nor did the Supreme Court of New Hampshire consider the case to involve such issues (R. 216). The authority of the Attorney General was to search for violations of the Subversive Activities Act, and to discover whether there were any "subversive persons" in the state. He had no power, and did not undertake to exercise any, to inquire into the curriculum of the University or the manner of teaching.

But the action of the Attorney General did gravely affect freedom of speech throughout the academic community and indeed throughout the State. The question under discussion in appellant's lectures is one of the most vital facing the nation today. Socialism and Marxism in all their many variants and shadings, whatever their merits, represent some of the most significant

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[18] For development of a further theory of First Amendment limitation see Comment, *Legislative Inquiry Into Political Activity: First Amendment Immunity From Committee Interrogation*, 65 Yale L. J. 1150 (1956).

[19] Cf. *Scopes* v. *State*, 154 Tenn. 105, 289 S. W. 363; *Meyer* v. *Nebraska*, 262 U. S. 390; *Pierce* v. *Society of Sisters*, 268 U. S. 510; *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624.

intellectual forces of our time. Americans must strive to study and understand them. It is impossible to study a set of doctrines without knowing what those who believe in their validity, and hence in a real sense advocate and teach them, understand them to mean. If the investigating process can be used to make it difficult or impossible for adherents to expound these doctrines and for students and others to have them expounded; as happened in this case, then the whole public purpose of the First Amendment is defeated.

POINT III

THE NEW HAMPSHIRE STATUTES, CONSTRUED TO REQUIRE APPELLANT TO ANSWER THE QUESTIONS CONCERNING THE PROGRESSIVE PARTY AND THE PROGRESSIVE CITIZENS OF AMERICA, SIMILARLY CONTRAVENE THE FIRST AMENDMENT AS APPLICABLE TO STATE ACTION UNDER THE FOURTEENTH AMENDMENT.

The attempt to force appellant to answer questions concerning the Progressive Party and the Progressive Citizens of America presents issues very similar to those just discussed. The area involved is another vital one in the democratic process,—the right of association for political expression and action. In this field, also, the power of legislative investigation to hamper, restrict and destroy can be overwhelming, especially where an unpopular political minority is under attack. Here also, we submit, regardless of how the line of First Amendment protection may be drawn, the Attorney General of New Hampshire has transgressed constitutional bounds.

The questions here at issue, it will be recalled, were whether Nancy Sweezy, appellant's wife, and Charles Beebe were active in forming the Progressive Citizens of America; whether appellant's meeting with Abraham Walenko in 1948 had anything to do with the Progressive Party; and whether Charles Beebe was active in the Progressive Party (see *supra*, pp. 13-4). In view of the application of most of our prior argument under Point II to these questions, we shall confine our discussion to a brief statement.

The most elemental principles of the democratic process, as embodied in the First and Fourteenth Amendments, require the government to keep its hands off the formation and operation of political organizations, except in certain narrow and specifically

defined areas. The state may, subject to pre-emptive Federal power, prevent the use of force or violence by political organizations and, we may assume, the advocacy of force or violence under conditions of clear and present danger. *Dennis* v. *U. S.*, 341 U. S. 494. It may also regulate political associations in certain respects not relevant here, such as with regard to election practices, direct lobbying, participation by government employees, and the like. But it may not interfere with the normal political process of forming or maintaining political organizations which advocate particular points of view or work for particular economic, social or political change by peaceful and legitimate methods. *DeJonge* v. *Oregon*, 299 U. S. 353; *U. S.* v. *Rumely*, 345 U. S. 41.

Yet this is exactly what the State of New Hampshire has attempted to do in this case through use of the legislative investigating power. So far as appears from this record, the Progressive Party and the Progressive Citizens of America were lawful political organizations (see R. 218). Appellant answered all questions with regard to his activities in these organizations and his knowledge of their activities, so far as the use or advocacy of force and violence was concerned. There is no evidence in the record or claimed to be in the possession of the Attorney General that either of them had ever employed force or violence or advocated its use. Appellant also answered all questions concerning the presence of Communist Party members in the two organizations and concerning Communist influence or manipulation of any kind. The remaining questions, to which the Attorney General now seeks an answer, thus related only to the peaceful and legitimate activities of political organizations not shown to have engaged in any illegal activity. And the persons the Attorney General inquired about — appellant's wife and two others — were not shown to be or claimed to be Communist Party members or "subversive persons." Hence the questions here at issue embraced an area plainly beyond the power of legislative action and equally beyond the scope of legislative inquiry. *Quinn* v. *U. S.*, 349 U. S. 155, 161; *U. S.* v. *Rumely*, 345 U. S. 41, 48.

Respondent has attempted to justify the inquiry into areas beyond the control of state legislative power upon the ground that the Attorney General was entitled to know what persons were active in the Progressive Party because he might have other information that such persons were Communist Party members or "subversive persons," and that the information sought would therefore have a bearing upon whether the Progressive Party was a "subversive organization." The argument, in effect, asserts a right to carry the legislative process of investigation, with all its sanctions, deep into every corner of a political party's activity, on the ground that some members of that party might also be members of the Communist Party. Moreover, as just stated, the Attorney General did not claim, and there was no showing, that the persons inquired about were Communist Party members or "subversive persons." Some of the questions related to the activities of the Progressive Citizens of America, which had gone out of existence in 1948, three years before enactment of the 1951 Act. Another question was not even directed to the issue whether the person involved (Abraham Walenko) was a member of the Progressive Party. Under the circumstances such a remote and speculative relation is not sufficient to overcome the clear mandate of the First Amendment that normal political activities must be free of government interference or restraint. Any other rule would, as noted previously, effectively open up virtually all political activity to the destructive impact of legislative investigation.

The same considerations dispose of respondent's argument that the questions were valid because information in the Attorney General's possession, though never produced in this proceeding, indicated that five or more leaders of the Progressive Party were also members of the Communist Party and that the Communist Party influenced the policies of the Progressive Party (R. 189-92). The New Hampshire Supreme Court held that these assertions of the Attorney General made the questions at issue here relevant under the New Hampshire statutes (R. 218-9). But the test of

statutory relevancy is not the same as the test of constitutional validity. Appellant answered all questions pertaining to Communist Party membership and influence. The further questions, opening up every phase of Progressive Party activity, were beyond the scope of legitimate inquiry.

Finally, respondent urges here again that the Attorney General was authorized to test appellant's answers through cross-examination embracing areas far beyond the range of "subversive activities." The answer given above is equally applicable here. On respondent's theory the Attorney General could call any member of an organization concerned with the field of public affairs; ask whether the organization contained any Communist members or was influenced by the Communist Party; and, if the answer is "No," proceed to conduct a full scale investigation into the affairs of the organization. To uphold such a view would subject all activities of numerous organizations—the Americans for Democratic Action, the American Civil Liberties Union, the National Association for the Advancement of Colored People, even the Democratic and Republican Parties—to investigation and exposure by legislative committees.

We must conclude, therefore, that the limiting principle of the First Amendment, as enunciated by this Court in the *Quinn* case, precludes the Attorney General from compelling an answer to the questions here at issue.

The same result would follow from the application of other theories of the First Amendment. The literal application of the First Amendment would plainly foreclose the issue. No clear and present (or probable) danger can arise from the legitimate activities of legitimate political organizations such as were here the subject of the Attorney General's inquiry. Any interest of the State of New Hampshire in probing the conduct of lawful political organizations is far overbalanced by the damage to the right of political association.

POINT IV

THE NEW HAMPSHIRE STATUTES COMPELLING APPELLANT TO ANSWER THE QUESTIONS HERE INVOLVED CONTRAVENE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

The principal source of authority for the Attorney General's investigation is the provision of the 1953 resolution which authorizes him to investigate "whether subversive persons as defined in [the 1951] Act are presently located within this state" (N. H. Laws 1953, Ch. 307, App. A, *infra*, p. 71.)[20] Examination of the term "subversive person" in the 1951 Act at once reveals that the power conferred upon the Attorney General is stated in such vague and uncertain language that it is impossible to ascertain its meaning or to limit its scope to situations properly within state authority.

"Subversive person," as defined in the 1951 Act, includes "any person who commits, attempts to commit, or *aids* in the commission, or advocates, abets, *advises or teaches, by any means* any person to commit, attempt to commit, or *aid* in the commission of any act *intended* to overthrow, destroy or alter, or to *assist* in the overthrow, destruction or alteration of" the constitutional form of government by force or violence (Sec. 1; italics supplied). This definition, as pointed out above, has been interpreted by the New Hampshire Supreme Court to include persons engaged in the specified conduct "whether or not done 'knowingly and willfully'" (*Nelson* v. *Wyman*, 99 N. H. 33, 39).

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[20]The other source of authority for the investigation was the provision authorizing the Attorney General to investigate "with respect to violations of the subversive activities act of 1951." The Attorney General, as chief enforcement officer of the state, already had full power to make such investigations and presumably had done so.

The result is that a person engaging in political activities in New Hampshire finds it impossible to know when some action of his, not knowingly or willfully undertaken, will be construed to "aid" in the commission of an act "intended" to "assist" in the overthrow of the government by force or violence. Similarly, he would not know when a speech or pamphlet of his, without his knowing or willing it, may be held to "teach" a person to "aid" in the commission of an act "intended" to "assist" in the overthrow of the government. For example, an individual might be subjected to questioning as a "subversive person," as the Attorney General argued in the Superior Court, if he said in a speech that socialism is inevitable in the United States:

> "If he made the statement to them that that kind of Socialism is inevitable in America, that is not teaching; as a matter of actual fact, that is advocacy, because to say something is inevitable is not to present it objectively at all but is to implant within youth the idea that the social system which exists in a Communist country is inevitable in America." (R. 147).

Similarly the Attorney General argued, with respect to another witness called by him:

> "Doesn't the question of whether or not a professor at a state institution who knew that a student chose Communism would not attempt to dissuade him in that choice any more than if he chose Capitalism, doesn't that question strike a relevant cord in an investigation into subversion?" (R. 118).

The term "subversive person" also includes any person "who is a member of a subversive organization or a foreign subversive organization" (Sec. 1). A "subversive organization" is defined to include any organization which advocates, abets, advises or teaches activities intended to overthrow, or to *assist* in the overthrow, of government by force or violence (Sec. 1). And a "foreign subversive organization" includes one "directed, dominated or controlled *directly or indirectly* by a foreign government"

which teaches, even by peaceful and constitutional methods, the "alteration of the constitutional form of government" and the establishment of "any form of government the direction and control of which is to be vested in, or exercised by or under, the domination or control of any foreign government, organization, or individual" (Sec. 1, italics supplied). Again the New Hampshire Supreme Court has interpreted the term "subversive person" to mean persons who were members of subversive and foreign subversive organizations "not knowing them to be such" (*Nelson* v. *Wyman*, 99 N. H. at 37; see also opinion in this case, R. 214, 216, 218).

Hence the right to join or participate in the affairs of political associations in New Hampshire is subjected to serious hazards. Any organization which later turns out to have one or more members suspected of being "subversive persons," or to be cited by the House Committee on Un-American Activities, might be held liable to investigation as "subversive." Thereupon the activities of all members, entirely apart from their actual knowledge of the situation, would be open to scrutiny and exposure by the Attorney General. Under such circumstances an individual considering participation in a political group, other than a rigidly orthodox one, would never know but that his wholly innocent and well-intended interest in public affairs might result in his being officially labelled a "subversive person."

The further power of the Attorney General to conduct investigation into violations of the 1951 Act, while in some respects more limited, is subject to similar uncertainty. Thus it is a felony to "assist in the formation or participate in the management or to contribute to the support of any subversive organization or foreign subversive organization" (Sec. 2 (d)). It is true that these provisions include requirements of knowledge and willfulness. Cf. *Dennis* v. *U. S.*, 341 U. S. 494, 515-6. But in a legislative investigatory proceeding such limitations would offer no

protection. For the public process of investigation, and its impact on the individual and the community, would be completed before the lack of knowledge or willfulness could be established.

The Attorney General did not distinguish between the two sources of his power in conducting the investigation. As already noted his principal reliance must have been upon the power to search for "subversive persons." In any event the vagueness inherent in that term and in some of the felony provisions so permeated the whole investigation that the existence of certain more definite provisions would be of little help in resolving the uncertainties of the witness.

The extent to which this uncertainty characterized the investigation is clear from the range of questions addressed to appellant by the Attorney General and his staff assistant, Mr. Conner. Among them were:

> Mr. WYMAN. Have you advocated and taken action designed to aid the replacement of the free enterprise economic system of the United States with some other form? (R. 39).

> Mr. WYMAN. Do you advocate now, today, that the Government of the United States or of the various states inquire into alleged subversion in this country purposing to establish either a Nazi or Fascist dictatorship in this country? (R. 46).

> Mr. CONNER. In the "Monthy Review" have you yourself taken the position that the only kind of a settlement which would really solve the German problem would be unification of the Country coupled with the kind of structural reforms which have been already instituted in the Soviet Zone? (R. 55).

Attorney General WYMAN. Did you carry physically into the lecture hall or room, as the case may be, anything in the nature of printed materials in assistance of your lecture?

The WITNESS. I had my brief case with me.

Attorney General WYMAN. Do you have any memory of what was in that brief case in connection with printed materials? (R. 72).

Attorney General WYMAN. In what respects is the dialectically materialistic aspect of the evolution of society consistent with belief in God? (R. 105).

Attorney General WYMAN. And in this Socialist economy that you advocate, that you support, who would own the means of production? (R. 108).

The same uncertainty as to whether there is any stopping place in the search for "subversive persons" appears throughout the Attorney General's petition and argument to the Superior Court (see *e.g.*, R. 10, 121, 125, 133, 148). And it is perhaps not without significance that in the view of Mr. Conner, the Attorney General's assistant, the scope of the investigation included taking down the license plate numbers of persons attending the Superior Court session (R. 199-200).

The uncertainty thus inherent in the New Hampshire statutes plainly fails to meet the requirements of due process that legislation must be framed in sufficiently clear terms to permit those subject to it to know "where this new standard of guilt would draw the line between the allowable and the forbidden . . ." *Winters* v. *N. Y.*, 333 U. S. 507, 519; *Lanzetta* v. *N. J.*, 306 U. S. 451; *Musser* v. *Utah*, 333 U. S. 95; *Connally* v. *General Construction Co.*, 296 U. S. 385. We are not dealing here with a traditional criminal prosecution. But the sanctions of the investigatory process can be equally severe. And the rule against

vagueness applies even to legislation enforced by civil process. *A. B. Small Co.* v. *American Sugar Refining Co.*, 267 U. S. 233.

The rule against vagueness has special force where the uncertainty pertains to the right of political expression. This is true because uncertainty in this area operates as a prior restraint upon communication, the most noxious form of restriction upon speech. See *Near* v. *Minnesota*, 283 U. S. 697; *Burstyn* v. *Wilson*, 343 U. S. 495; *Thornhill* v. *Alabama*, 310 U. S. 88, 97-8. Likewise it creates the opportunity for discriminatory application of the law, a factor which weighs heavily against speech that is unpopular. See *Thornhill* v. *Alabama*, *supra*; *Kunz* v. *N. Y.*, 340 U. S. 290, 293-4; *Niemotko* v. *Maryland*, 340 U. S. 268, 271-3.

One other aspect of due process is likewise decisive. The breadth of the statute (and the investigation under it) carries its restrictions into areas that due process of law does not permit to a state. This Court has expressly ruled that a state requirement for loyalty of government employees, which imposes disqualification for innocent membership in subversive organizations, violates due process of law. *Wieman* v. *Updegraff*, 344 U. S. 183. The legislation here involved has been interpreted by the New Hampshire Supreme Court to do precisely what this Court outlawed in the *Updegraff* case. The fact that this legislation imposes sanctions through legislative investigation rather than through deprivation of government employment, does not change the principle. In fact, the arbitrary exercise of the power of legislative inquiry may be even more destructive of individual rights than a similar exercise of power over eligibility for government employment. In either case, "Indiscriminate classification of innocent with knowing activity must fall as an assertion of arbitrary power" (344 U. S. at 191).

POINT V

THE NEW HAMPSHIRE STATUTES ARE INVALID BY REASON OF FEDERAL PRE-EMPTION OF THE FIELD.

In *Pennsylvania* v. *Nelson*, 350 U. S. 497, this Court held the Pennsylvania Sedition Act invalid on the ground that existing Federal legislation in the field of sedition precluded state legislation on the same subject. That decision is controlling here.

(1)

The power of the Attorney General of New Hampshire to conduct a legislative investigation under the 1953 resolution (N. H. Laws 1953, Ch. 307, App. A *infra*, p. 71) clearly depended upon the validity of the Subversive Activities Act of 1951 (N. H. Laws 1951, Ch. 193, App. A *infra*, p. 62). The Attorney General's authority under the enabling resolution was limited to an "investigation with respect to violations of the subversive activities act of 1951 and to determine whether subversive persons as defined in said act are presently located within this state." Obviously authority to investigate violations of the 1951 Act must have meant activities that could constitutionally be made a violation of that Act. Similarly authority to investigate "subversive persons" as defined in the 1951 Act must have meant persons who could be constitutionally so designated for purposes of state control.

The Supreme Court of New Hampshire has recognized this dependence of the 1953 resolution upon the 1951 Act. In *Nelson* v. *Wyman*—a proceeding which directly challenged only the Attorney General's investigation—the Court assumed throughout that the investigation would be valid only if the 1951 Act was valid, and proceeded to examine and pass upon the validity of the 1951 Act. See 99 N. H. 33, 41-2, 46-51.

Under the *Pennsylvania v. Nelson* ruling those provisions of the 1951 Act which deal with sedition (Sec. 2 to 8, incl.) are clearly superseded by the Federal legislation on the same subject; they deal with the same matters, and in the same way, as did the Pennsylvania Sedition Act. Those provisions of the 1951 Act which established a loyalty program for state employees and candidates for state office (Sec. 9 to 14, incl.) are presumably unaffected by the *Nelson* case.[21] Since the 1953 resolution is valid only to the extent that the 1951 Act is valid, the only remaining issue is whether the questions which appellant refused to answer were premised upon power derived from the valid or invalid portions of the 1951 statute.

The answer to this would not seem in doubt. None of the questions propounded to appellant related to the loyalty program for state employees or candidates for state office. All concerned issues of alleged sedition aimed at the entire nation, of the same nature as those involved in the Pennsylvania case. These provisions of the 1951 statute being invalid under the *Nelson* decision, the investigation is likewise beyond state power.

(2)

The same result follows whether or not it be held that the validity of the 1953 resolution depends upon the validity of the 1951 Act. Even if the 1953 resolution be construed as an independent delegation of authority to investigate subversive acts and persons, without reference to the 1951 Act, any such attempted exercise of state power to investigate must fail under the *Nelson* doctrine.

The purpose of the 1953 resolution was clearly to conduct an investigation into the type of "subversive activities" which, it is

[21] The remaining sections—Sec. 1, 15, 16 and 17—are applicable to both halves of the Act.

now plain, are subject to exclusive Federal control. The objective of the Attorney General was the same. And the investigation actually conducted in this case, as just observed, in fact dealt with such matters and only such matters. Whatever authority the State of New Hampshire may have to inquire into "subversive activities" affecting only State interests, no such power was exercised here.

Clearly a state legislative investigation, dealing entirely with matters pre-empted by Federal authority, must be invalid. The source of authority to investigate is the power to obtain information in aid of legislation. The New Hampshire Supreme Court made this entirely clear in *Nelson* v. *Wyman*:

> "It is of little importance that the resolution in this case fails to state in explicit terms the use to which the Legislature intends to put the information gained by it from the investigation since it plainly relates to a subject matter into which the legislature has authority to inquire. *McGrain* v. *Daugherty*, 273 U. S. 135, 178; *In re Chapman*, 166 U. S. 661, 670. It specifically directs the Attorney General to report to the Legislature the results of this investigation and his recommendations as to any necessary legislation, thus indicating with sufficient clarity a legislative purpose that a subject matter properly within its jurisdiction be investigated with a view of providing it with information upon which further action by it may be predicated." *Nelson* v. *Wyman*, 99 N. H. 33, 36-7; to the same effect see opinion in this case (R. 211).

Since *Pennsylvania* v. *Nelson* precludes state legislation in this field the power to investigate does not exist. If the primary function of legislating is not open to the New Hampshire legislature the dependent power to investigate is a fortiori foreclosed.

On the other hand, if we assume, contrary to the expressed views of the New Hampshire Supreme Court, that the New Hampshire legislature has power to investigate for purposes other

than as an aid to legislation, the investigating resolution is equally invalid under *Pennsylvania* v. *Nelson*. In that event the purpose of the investigation would be in the nature of regulation, such as to apply the sanctions of publicity or exposure to "subversive activities" or "subversive persons." Such regulation is plainly precluded for the same reasons as the Pennsylvania Sedition Act. It deals with an area where the scheme of Federal regulation is now pervasive; it touches a field in which the Federal interest is dominant; and it entails serious danger of conflict with Federal regulation and investigation. *Pennsylvania* v. *Nelson*, 350 U. S. at 502-10.

CONCLUSION

The issues here go to the heart of the democratic process in America. At no time in our history has it been more important to keep open the channels of public discussion concerning the vital and troublesome questions which face the people of our nation in these difficult times. The power of legislative inquiry has been used here to block public discussion at two crucial points—in the academic community where new ideas and plans must be generated and developed, and in the arena of political organization where policy decisions must be formulated and carried into action. No legitimate interest of the state justifies the suppression of free expression such as was attempted in this case.

We respectfully submit that the decision of the New Hampshire Supreme Court should be reversed with instructions to dismiss the proceedings.

Respectfully submitted,

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APPENDIX A

LAWS OF NEW HAMPSHIRE 1951

CHAPTER 193

AN ACT RELATIVE TO SUBVERSIVE ACTIVITIES

WHEREAS, there is a World-Communist movement under the domination of a foreign power, having as its objective the establishment of totalitarian dictatorship in all parts of the world under its control; and

WHEREAS, such dictatorship is characterized by the liquidation of all political parties other than the Communist Party, the abolishment of free speech, free assembly, and freedom of religion, and is the complete antithesis of the American constitutional form of government; and

WHEREAS, the methods used by such a police state include treachery, deceit, infiltration into governmental and other institutions, espionage, sabotage, terrorism and other unlawful means; and

WHEREAS, the World Communist movement is not a political movement, but is a world-wide conspiracy having sections in each country; and

WHEREAS, using the methods above set forth, it has already successfully conquered in recent years a large part of the world and has established spearheads in this country in the form of various conspiratorial organizations, some masquerading under the pretense of being political parties, others infiltrating organizations which they seek to control in order to further the objectives of the World Communist movement; and

WHEREAS, the subversive groups have had similar objectives and it is essential to the preservation of the state, as well as for the protection of citizens from unfounded accusations, that criminal acts of a seditious nature be clearly and expressly defined; and

WHEREAS, the methods adopted by subversive persons and organizations render it imperative that the loyalty of persons entering the public employment of the state of New Hampshire or any of its political subdivisions be definitely established, not only for protection of governmental processes but in order to shield employees from unfounded accusations of disloyalty; therefore

Be it enacted by the Senate and House of Representatives in General Court convened:

1: **Subversive Activities.** Amend the Revised Laws by adding after chapter 457 the following new chapter:

Chapter 457-A

Subversive Activities

1. **Definitions.** For the purposes of this chapter "organization" means an organization, corporation, company, partnership, association, trust, foundation, fund, club, society, committee, association, political party, or any group of persons, whether or not incorporated, permanently or temporarily associated together for joint action or advancement of views on any subject or subjects.

"Subversive organization" means any organization which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach activities intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or of any political subdivision of either of them, by force, or violence.

"Foreign subversive organization" means any organization directed, dominated or controlled directly or indirectly by a foreign government which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or to advocate,

abet, advise, or teach, activities intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of the constitutional form of government of, the United States, or of the state of New Hampshire, or of any political subdivision of either of them, and to establish in place thereof any form of government the direction and control of which is to be vested in, or exercised by or under, the domination or control of any foreign government, organization, or individual; but does not and shall not be construed to mean an organization the *bona fide* purpose of which is to promote world peace by alliances or unions with other governments or world federations, unions or governments to be effected through constitutional means.

"Foreign government" means the government of any country or nation other than the government of the United States of America or of one of the states thereof.

"Subversive person" means any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches, by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force, or violence; or who is a member of a subversive organization or a foreign subversive organization.

Sedition

2. **Felonies.** It shall be a felony for any person knowingly and willfully to

(a) commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force or violence; or

(b) advocate, abet, advise, or teach by any means any person to commit, attempt to commit, or assist in the commission of any such act under such circumstances as to constitute a clear and present danger to the security of the United States, or of the state of New Hampshire or of any political subdivision of either of them; or

(c) conspire with one or more persons to commit any such act; or

(d) assist in the formation or participate in the management or to contribute to the support of any subversive organization or foreign subversive organization knowing said organization to be a subversive organization or a foreign subversive organization; or

(e) destroy any books, records or files, or secrete any funds in this state of a subversive organization or a foreign subversive organization, knowing said organization to be such.

Any person who shall be convicted by a court of competent jurisdiction of violating any of the provisions of this section shall be fined not more than twenty thousand dollars, or imprisoned for not more than twenty years, or both, at the discretion of the court.

3. **Penalty.** It shall be a felony for any person after August 1, 1951 to become, or after November 1, 1951 to remain a member of a subversive organization or a foreign subversive organization knowing said organization to be a subversive organization or foreign subversive organization. Any person who shall be convicted by a court of competent jurisdiction of violating this section shall be fined not more than five thousand dollars; or imprisoned for not more than five years, or both, at the discretion of the court.

4. **Barred from Office.** Any person who shall be convicted by a court of competent jurisdiction of violating any of the provisions of sections 2 and 3 of this chapter, in addition to all other penalties therein provided, shall from the date of such conviction be barred from

(a) holding any office, elective or appointive, or any other position of profit or trust in or employment by the government

of the state of New Hampshire or any agency thereof or of any county, municipal corporation or other political subdivision of said state;

(b) filing or standing for election to any public office in the state of New Hampshire.

5. **Dissolution of Organizations.** It shall be unlawful for any subversive organization or foreign subversive organization to exist or function in the state of New Hampshire and any organization which by a court of competent jurisdiction is found to have violated the provisions of this section shall be dissolved, and if it be a corporation organized and existing under the laws of the state of New Hampshire, a finding by a court of competent jurisdiction that it has violated the provisions of this section shall constitute legal cause for forfeiture of its charter and its charter shall be forfeited, and all funds, books, records and files of every kind and all other property of any organization found to have violated the provisions of this section shall be seized by and for the state of New Hampshire, the funds to be deposited in the state treasury and the books, records, files and other property to be turned over to the attorney general of New Hampshire.

6. **Assistance Furnished.** For the collection of any evidence and information referred to in this chapter, the attorney general is hereby directed to call upon the superintendent of state police, and county and municipal police authorities of the state to furnish him such assistance as may from time to time be required. Such police authorities are directed to furnish information and assistance as may be from time to time so requested. The attorney general may testify before any grand jury as to matters referred to in this chapter as to which he may have information.

7. **Records.** The attorney general shall maintain complete records of all information received by him and all matters handled by him under the requirements of this chapter. Such records as may reflect on the loyalty of any resident of this state shall not be made public nor divulged to any person except with the permissions of the attorney general to effectuate the purposes hereof.

8. **Grand Jury Inquiries.** The superior court, when in its discretion it appears appropriate or when informed by the county solicitor that there is information or evidence of the character described in section 2 of this chapter to be considered by the grand jury, shall charge the grand jury to inquire into violations of this chapter for the purpose of proper action, and further to inquire generally into the purposes, processes and activities and any other matters affecting communism or any related or other subversive organizations, associations, groups or persons.

Loyalty

9. **Employment.** No subversive person, as defined in this chapter, shall be eligible for employment in, or appointment to any office, or any position of trust or profit in the government of, or in the administration of the business of this state, or of any county, municipality, or other political subdivision of this state.

10. **Written Statements Required.** Every person and every board, commission, council, department, court or other agency of the state of New Hampshire or any political subdivision thereof, who or which appoints or employs or supervises in any manner the appointment or employment of public officials or employees shall establish by rules, regulations or otherwise, procedures designed to ascertain before any person, including teachers and other employees of any public educational institution in this state, is appointed or employed, that he or she as the case may be, is not a subversive person, and that there are no reasonable grounds to believe such persons are subversive persons. In the event such reasonable grounds exist, he or she as the case may be, shall not be appointed or employed. In securing any facts necessary to ascertain the information herein required, the applicant shall be required to sign a written statement containing answers to such inquiries as may be material, which statement shall contain notice that it is subject to the penalties of perjury.

11. **Exceptions.** The inquiries prescribed in section 10 other than the written statement to be executed by an applicant for

employment, shall not be required as a prerequisite to the employment of any persons in the classification of laborers in any case in which the employing authority shall in his or its discretion determine, and by rule and regulation specify the reasons why, the nature of the work to be performed is such that employment of persons as to whom there may be reasonable grounds to believe that they are subversive persons as defined in this chapter will not be dangerous to the health of the citizens or the security of the government of the United States, the state of New Hampshire or any political subdivision thereof.

12. **Present Employees.** Every person, who on August 1, 1951 shall be in the employ of the state of New Hampshire or of any political subdivision thereof, other than those now holding elective office shall be required on or before October 1, 1951 to make a written statement which shall contain notice that it is subject to the penalties of perjury, that he or she is not a subversive person as defined in this chapter, namely, any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force, or violence; or who is a member of a subversive organization or a foreign subversive organization, as more fully defined in this chapter such statement shall be prepared and execution required by every person and every board, commission, council, department, court, or other agency of the state of New Hampshire or any political subdivision thereof responsible for the supervision of employees under its jurisdiction. Any such person failing or refusing to execute such a statement or who admits he is a subversive person as defined in this chapter shall immediately be discharged.

13. **Discharge of Personnel; Hearing.** Reasonable grounds on all the evidence to believe that any person is a subversive person, as defined in this chapter shall be cause for discharge from any

appointive office or other position of profit or trust in the government of or in the administration of the business of this state, or of any county, municipality or other political subdivision of this state, or any agency thereof. The personnel commission shall, by appropriate rules or regulations, prescribe that persons charged with being subversive persons, as defined in this chapter, shall be accorded notice and opportunity to be heard, in accordance with the procedures prescribed by law for discharges for other reasons. Every person and every board, commission, council, department, or other agency of the state of New Hampshire or any political subdivision thereof having responsibility for the appointment, employment or supervision of public employees not covered by the state classified service shall establish rules or procedures similar to those required herein for classified services for a hearing for any person charged with being a subversive person, as defined in this chapter after notice and opportunity to be heard. Every employing authority discharging any person pursuant to any provision of this chapter shall promptly report to the attorney general the fact of and the circumstances surrounding such discharge. A person discharged under the provisions of this section shall have the right within thirty days thereafter to appeal to the superior court of the county where such person may reside for a determination by such court (with the aid of a jury if the appellant so elects) as to whether or not the discharge appealed from was justified under the provisions of this act. The court shall speedily hear and determine such appeals, and from the judgment of the court, there shall be a further appeal to the supreme court of New Hampshire as in civil cases.

14. Declarations of Candidates. No person shall become a candidate for election to, nor qualify for, any public office under the election laws of this state unless he or she shall file with the declaration of candidacy, or prior to qualifying, an affidavit that he or she is not a subversive person as defined in this chapter. No declaration of candidacy shall be received for filing by any town or city clerk or by the secretary of state unless accompanied by the affidavit aforesaid and there shall not be entered upon any

ballot or voting machine at any election the name of the person who has failed or refused to make the affidavit aforesaid. (As amended by N. H. Laws 1953, Ch. 180).

15. **False Statements.** Every written statement made pursuant to this chapter by an applicant for appointment or employment, or by any employee shall be deemed to have been made under oath if it contains a declaration preceding the signature of the maker to the effect that it is made under the penalties of perjury. Any person who makes a material misstatement of fact (a) in any such written statement, or (b) in any affidavit made pursuant to the provisions of this chapter, or (c) under oath in any hearing conducted by any agency of the state, or of any of its political subdivisions, pursuant to this chapter, or (d) in any written statement by an applicant for appointment or employment or by an employee in any state aid institution of learning in this state, intended to determine whether or not such applicant or employee is a subversive person as defined in this chapter, which statement contains notice that it is subject to the penalties of perjury shall be subject to the penalties of perjury prescribed in chapter 457 of the Revised Laws.

16. **Separability.** If any provision, phrase, or clause of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not effect other provisions, phrases, or clauses or applications of this chapter which can be given effect without the invalid provision, phrase, or clause or application and to this end the provisions, phrases and clauses of this chapter are declared to be severable.

17. **Title.** This chapter may be cited as the Subversive Activities Act of 1951.

This act shall take effect August 1, 1951.

(Approved August 1, 1951.)

LAWS OF NEW HAMPSHIRE 1953

CHAPTER 307

Joint Resolution Relating to the Investigation of Subversive Activities

Resolved by the Senate and House of Representatives in General Court convened:

That the attorney general is hereby authorized and directed to make full and complete investigation with respect to violations of the subversive activities act of 1951 and to determine whether subversive persons as defined in said act are presently located within this state. The attorney general is authorized to act upon his own motion and upon such information as in his judgment may be reasonable or reliable. He may authorize any member of his staff to conduct on his behalf any part of the investigation herein provided for and in such event and for such purposes any member so authorized shall have all the powers herein granted to the attorney general.

For the purposes of this resolution, the attorney general or any duly authorized member of his staff is authorized to sit and act at such times and places during this session of the 1953 legislature, recess and adjourned periods, and to employ such attorneys, experts, clerical and other assistance as may be required, to require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, and documents, and to administer such oaths, to take such testimony and to make such expenditures within the limitations authorized herein as he deems advisable. The provisions of section 7 of chapter 193 of the Laws of 1951 shall be inapplicable to the investigation provided for herein, and the attorney general is hereby authorized to make public such information received by him, testimony given before him, and matters handled by him as he deems fit to effectuate the purposes of this resolution.

The attorney general is directed to proceed with criminal prosecutions under the subversive activities act whenever evidence presented to him in the course of the investigation indicates violations thereof, and he shall report to the 1955 session on the first day of its regular session the results of this investigation, together with his recommendations, if any, for necessary legislation. There is hereby appropriated for the expenses of this investigation the sum of ten thousand dollars which shall include the cost of printing such report as is provided for by this resolution and shall be expended under the direction of the attorney general, but nothing herein contained shall limit the power of the attorney general to act in cases of reasonable necessity under the provisions of section 11 of chapter 24 of the Revised Laws. The governor is hereby authorized to draw his warrants for the sum hereby appropriated out of any money in the treasury not otherwise appropriated.

[Approved June 17, 1953.]

LAWS OF NEW HAMPSHIRE 1955

CHAPTER 181

An Act Relative to Evidence of Membership or Participation in Subversive Organizations

Be it enacted by the Senate and House of Representatives in General Court convened:

1. Membership or Participation in Subversive Organizations.

Amend chapter 457-A of the Revised Laws, as inserted by chapter 193, Laws of 1951 (section 3, chapter 588, RSA) by inserting after section 3 the following new sections:

3-a. Evidence of Membership or Participation. In determining membership or participation in a subversive organization or a foreign subversive organization as defined in this chapter,

or knowledge of the purpose or objective of such organization, the jury, under instructions from the court, may consider evidence, if presented, as to whether the accused person to his knowledge:

(1) has been listed as a member in any book or any of the lists, records, correspondence, or any other document of the organization;

(2) Has made financial contribution to the organization in dues, assessments, loans, or in any other form;

(3) Has made himself subject to the discipline of the organization in any form whatsoever;

(4) Has executed orders, plans, or directives of any kind of the organization;

(5) Has acted as an agent, courier, messenger, correspondent, organizer, or in any other capacity in behalf of the organization;

(6) Has conferred with officers or other members of the organization in behalf of any plan or enterprise of the organization;

(7) Has been accepted as an officer or member of the organization or as one to be called upon for services by other officers or members of the organization;

(8) Has written, spoken or in any other way communicated by signal, semaphore, sign, or in any other form of communication orders, directives, or plan of the organization;

(9) Has prepared documents, pamphlets, leaflets, books, or any other type of publication in behalf of the objectives and purposes of the organization;

(10) Has mailed, shipped, circulated, distributed, delivered, or in any other way sent or delivered to others material or propaganda of any kind in behalf of the organization;

(11) Has advised, counseled or in any other way imparted information, suggestions, recommendations to officers or members

of the organization or to anyone else in behalf of the objectives of the organization;

(12) Has indicated by word, action, conduct, writing or in any other way a willingness to carry out in any manner and to any degree the plans, designs, objectives, or purposes of the organization;

(13) Has in any other way participated in the activities, planning, actions, objectives, or purposes of the organization;

(14) The enumeration of the above subjects of evidence on membership or participation in a subversive organization or a foreign subversive organization as above defined, shall not limit the inquiry into and consideration of any other subject of evidence on membership and participation as herein stated.

3-b. **Construction.** Nothing in section 3-a shall be construed to limit the supervisory power of the court over the admission and exclusion of evidence or over the sufficiency of the evidence as a whole.

2. **Takes Effect.** This act shall take effect upon its passage.

[Approved June 8, 1955.]

LAWS OF NEW HAMPSHIRE 1955

CHAPTER 197

An Act Relative to Investigation of Subversive Activities

Be it enacted by the Senate and House of Representatives in General Court convened:

1. **Subversive Investigation.** The investigation of subversive activities by the attorney general provided for by chapter 307 of the laws of 1953, as continued by a resolution approved January 13, 1955, is hereby continued in full force and effect, in form, manner and authority as therein provided for the further

period until June 30, 1957. The attorney general shall report to the general court of 1957 the results of this further investigation together with his recommendations, if any, for necessary legislation. He may at any time during said period temporarily or permanently conclude his investigation hereunder if, in his opinion, no useful public purpose would be served by continuation of the investigation. There is hereby appropriated for the expenses of this continued investigation a sum not to exceed forty-two thousand five hundred dollars, which shall include the cost of printing such report as is provided for hereby, but nothing herein contained shall limit the power of the attorney general to act in cases of reasonable necessity under the provisions of section 11 of chapter 24 of the Revised Laws (section 12, chapter 7, RSA). The governor is hereby authorized to draw his warrants for the sum hereby appropriated out of any money in the treasury not otherwise appropriated.

2. **Takes Effect.** This act shall take effect upon its passage.

[Approved June 14, 1955.]

LAWS OF NEW HAMPSHIRE 1955

CHAPTER 340

Joint Resolution Relative to Continued Duties of the Attorney General

Resolved by the Senate and House of Representatives in General Court convened:

THAT the attorney general is hereby authorized and directed to continue the investigation authorized by chapter 307 of the Laws of 1953 in form, manner and authority as therein provided for the period from January 1, 1955 to April 30, 1955, and for the purposes hereof the provisions of said chapter 307, except as otherwise herein provided, are hereby continued in full force and effect for the additional period herein mentioned.

[Approved January 13, 1955.]

APPENDIX B

Merrimack.
No. 4509.

GORDON KAHN

v.

LOUIS C. WYMAN, *Attorney General*

Submitted May 31, 1956

Decided June 8, 1956

PETITION, for declaratory judgment and injunctive relief seeking a declaration that RSA 588 and Laws 1953, *c.* 307 and Laws 1955, *c.* 197 are superseded and of no effect. The plaintiff has been ordered by the defendant to appear before him in his investigation of subversive activities. The present proceedings seek to halt this investigation on the grounds that the field of prosecution and investigation of subversive activities is now exclusively occupied by the federal authorities. After hearing, the Superior Court denied the petition and the defendant's exceptions were reserved and transferred by *Westcott, J.*

Tiffany & Osborne for the plaintiff.

Louis C. Wyman, Attorney General, *pro se.*

Hugh H. Bownes, amicus curiae.

PER CURIAM. The divided opinion in *Pennsylvania v. Nelson*, 350 U. S. 497 (decided April 2, 1956) is interpreted to hold that this state is precluded from prosecuting crimes which involve sedition and subversive activities directed against the government of the United States because as there stated the enforcement of state acts forbidding such activities "presents a serious danger of conflict with the administration of the federal program." See also, *Commonwealth v. Gilbert*, (Mass.) 134 N. E. (2d) 13 (decided May 3, 1956).

In the present case, however, the issue is whether or not the *Nelson* case precludes the Legislature of this state from conducting investigations of subversive activities within the state as distinct from providing for the prosecution of crimes. While it is not clear what a state legislative investigation of subversive activities may accomplish at the present time, we are not satisfied that the *Nelson* case, *supra*, purports to preclude such an investigation. If state investigation of subversive activities is to be prohibited, a declaration to that effect must come from higher authority than this court. We know of no decision of any court which has ruled that the investigative aspects of state subversive activities legislation have been preempted by the federal government. We therefore conclude that the Trial Court was correct in dismissing this petition.

Questions attempted to be raised about the validity of the Immunity Act (Laws 1955, c. 312) are not involved in this proceeding at this time.

Petition dismissed.

APPENDIX C

STATE OF NEW HAMPSHIRE

SUPREME COURT

CERTIFICATE

This is to certify that the Supreme Court of the State of New Hampshire considered upon its merits the further motion for rehearing filed on behalf of the defendant Paul M. Sweezy in the action entitled, *No. 5395, Louis C. Wyman, Attorney General* v. *Paul M. Sweezy*. This motion raised the question of supersession of RSA Chapter 588 and Chapter 307, Laws of 1953 by federal occupation of the field to the exclusion of parallel state legislation after *Commonwealth of Pennsylvania* v. *Steve Nelson*, 350 U.S. 497 (1956) was decided. After due consideration, the Court unanimously denied the further motion for rehearing because it is not satisfied that the *Nelson* case, *supra*, purports to preclude a state legislative investigation of subversive activities. See, *Gordon Kahn* v. *Louis C. Wyman, Attorney General*, decided June 8, 1956, 100 N. H.

IN WITNESS WHEREOF, the Supreme Court of the State of New Hampshire has affixed its hand and seal by its Chief Justice Frank R. Kenison.

(s) FRANK R. KENISON,
For the entire Court.
[SEAL]

January 9, 1957.

Motion to Dismiss

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Supreme Court of the United States

OCTOBER TERM 1956

No. 175

PAUL M. SWEEZY

v.

THE STATE OF NEW HAMPSHIRE

On Appeal from The Supreme Court of The State of New Hampshire

MOTION TO DISMISS

THE STATE OF NEW HAMPSHIRE

BY: LOUIS C. WYMAN, Attorney General

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1956

No. 175

PAUL M. SWEEZY

v.

THE STATE OF NEW HAMPSHIRE

On Appeal from The Supreme Court of The State of New Hampshire

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MOTION TO DISMISS

THE STATE OF NEW HAMPSHIRE

BY: LOUIS C. WYMAN, Attorney General

PRELIMINARY STATEMENT

Appellee, The State of New Hampshire, by Louis C. Wyman, Attorney General, in conformity with Rule 16 of the Rules of this Honorable Court, respectfully submits the following Motion to Dismiss the appeal of Paul M. Sweezy, Appellant, on the grounds specified in said Motion.

MOTION TO DISMISS

I. No substantial Federal question is involved.

Now comes Appellee, The State of New Hampshire, by Louis C. Wyman, Attorney General, and respectfully moves that the appeal of Paul M. Sweezy, Appellant, as more particularly described in the Jurisdictional Statement filed by Appellant with this Honorable Court in June 15, 1956, be dismissed, on the ground that no substantial federal question is involved.

It is believed important to observe at this point that the decision of the New Hampshire Supreme Court appealed from involved a conviction of contempt of court in The State of New Hampshire for refusing to answer questions in a legislative fact-finding investigation. *It did not involve a prosecution for crime.* In affirming the conviction of contempt, the highest Court of the State found the questions to be relevant to the investigation and the answers to be required in the exercise of the fact-finding function of the delegated legislative committee.

Appellant was questioned concerning the content of lectures to students *required to attend the lectures to obtain academic credit* in a state-supported institution (the University of New Hampshire). His lectures were neither soap box addresses on the public common nor pre-publicized voluntary talks to an audience free to attend or not to attend, as it wished. Appellant declined to answer questions concerning the subject of his lecture or its content. In fact he would say nothing further than that he did not advocate therein the overthrow of constitutional government by force and violence. He refused to accede to reasonable, relevant, and courteous cross-examination to test his empirical denial of subversive activity without claiming the privilege against self-incrimination. For this he was found in contempt of court.

No federal question of substance is presented in the decision of a State Supreme Court requiring that a witness in a legislative fact-finding investigation answer questions the Court found to be relevant to an investigation to determine whether or not subversive activities as defined in a clear and well written statute (RSA

NH 588, as set forth in Appendix B to Appellant's Jurisdictional Statement) had taken place within the State. It is believed extremely important to stress the fact that upon the record before this Honorable Court, Appellant Sweezy was not a defendant before the delegated legislative questioner. He was a witness. He only became a defendant when the matter had been transferred to the Superior Court and when, on his own choice and with advice of his own counsel, in the presence of the Superior Court, he declined to answer questions found by that Court to be relevant to New Hampshire's investigation.

See: *Orman* v. *United States*, 207 F (2d) 148, 153 (1953)
Sinclair v. *United States*, 279 U.S. 263, 299 (1929)
Oklahoma Press Publishing Co. v. *Walling*, 327 U.S. 186, 209 (1946)

The difference between advocacy of subversive doctrine and teaching about what such doctrine is in the sense of objective explanation is obvious, at least on paper. Subtleties of shading of advocacy by inflection, gesture, or even mien, are not so obvious. It is unlawful to advocate subversive doctrine in New Hampshire. It is unlawful to advocate communism in New Hampshire. It is unlawful to advocate anything synonymous with communism no matter by what name it may be called if tenets, objectives and elements of the subject include resort to force and violence to alter our constitutional government if need be.

The Supreme Court of New Hampshire has held as a matter of law that in New Hampshire a legislative fact-finding committee inquiring into subversive activity—charged with the responsibility of finding out whether subversive activity has in fact existed in New Hampshire—may inquire into the actual content of any lecture given at any school. *Nelson* v. *Wyman*, 99 N. H. 33, 105 A 2d 756 (1954). This ruling is crystal clear. It in no way operates as license to any legislative committee, or to the Attorney General acting as such, to subordinate objective classroom teachings to legislative fiat. It does not smack of fascism. It does not substitute a legislative committee for the board of

trustees of the institution. It confines the inquiry to the sole objective of determining whether there is or has been subversion in the statutory formula. It does permit inquiry within the precept of the investigating resolution. *When a witness says that there was no subversive conduct there then must follow questioning as to what was in fact done and in fact said.* Such questioning is not necessarily even criticism. It is merely fact-finding, no more and no less.

See: *U. S. News & World Report* issue of Oct. 21, 1955, "A New clue to Red Thinking, It's Still Toe the Mark or Else" pp. 37-41; 138;

The Theory and Practice of Communism, Hunt (MacMillan Co., N. Y. 1952), particularly c. 16, p. 64, "The Marxist Theory of the State and Revolution"

II. Relevant, courteous questioning to determine what was in fact said and done in a given lecture violates neither the First nor the Fourteenth Amendment, nor does it abort academic freedom.

Appellant in his Jurisdictional Statement has asserted four propositions in support of his contention that substantial federal questions are involved in this case. These contentions appear at pages 17 - 31 of the Jurisdictional Statement and concern alleged violations of the First and Fourteenth Amendments claimed to arise solely from an obligation to answer questions related to subversive activities.

It is respectfully submitted that none of the questions asked violate any constitutional rights of Appellant. The questioning was done courteously, and in no sense offensively except perhaps to those who take great offense at any compulsory process whatever. It is believed important to observe that the transcript of questioning of Appellant itself, revealed by Appellant's own answers, contains quite a number of tracks in the snow which could not help but lead an investigator, be he State or Federal, to believe it quite relevant to question Appellant concerning not

only what he said but what he meant by what he said. Amongst these tracks in the snow were affiliations with organizations cited by the United States Attorney General or by the House Committee on Un-American Activities, United States House of Representatives, as Communist-controlled. Of course, such citation does not establish either the fact of Communist control nor criminality, *per se*, nor subversiveness of membership therein or activities therefor and it is not contended here that it does.

But it does indicate that somebody for some purposes, whether a Federal loyalty-security program or general public information, believed upon some basis (usually a transcript of sworn testimony) that Communists were in control of organizations which Appellant worked in behalf of either as a member or otherwise over a long period of time. The *Report of Subversive Activities in New Hampshire* dated January 5, 1955, p. 176, identifies the leadership of the Progressive Party in New Hampshire and further identifies many of these individuals as members of the Communist Party. On page 179 of this report, the Appellant's affiliation with the Progressive Party is set forth for years 1947 through 1952. With this background it is noted that on October 7, 1954, Matthew Cvetic, a former FBI informant, testified before the Senate Internal Security Sub-committee and stated:

> "The Progressive Party . . . was set up by the organizational committee and also the political commission of the Communist Party . . : The personnel that moved around within the framework of the Progressive Party in key positions were assigned out of the Communist Party office . . . In other words, it was controlled by planted key Communist agents, who had absolute control of the Progressive Party."

This raises a series of compelled questions about Appellant's activities to any Committee charged with the duty of investigation to determine whether subversive persons or subversive organizations are located within the State.

This is particularly true when as the result of a document furnished to the examiner by Appellant himself in the course of

the original questioning in executive session (T. 64, l. 39) it appeared that Appellant co-edited the *Monthly Review* and in one of the 1953 issues discussed his concept of "Socialism" in the following way (T. 69, line 11):

> "And as regards the leaders of the two camps, it is certain that in the last eight years the United States has been responsible for killing a vastly greater number of human beings than has the Soviet Union."
>
> . . . . . .
>
> "So far as the United States and its allies are concerned, there is unfortunately no doubt about the answer. Our Country is preparing to practice violence on a hitherto undreamed-of scale to preserve a social order which in the space of four decades has already produced the greatest orgy of violence in the whole long and violent history of the human race. Capitalism, the organization of society according to the barbaric principle of private profit, is the scourge of mankind; and violence designed to preserve it is doubly damned once for itself and once for its purpose."
>
> "Those of us who have socialism in our bones, who believe that a truly human society can be erected only on the basis of common ownership and economic planning, must necessarily judge the violence of the socialist countries differently. We hate it, as we hate all violence; we would have vastly preferred to have the building of the new economy take place peacefully and painlessly, as it could have if the advanced countries had led the way. But history—which, as Friedrich Engels once said, is a most cruel goddess—decreed that the economic foundations of the society of the future must be laid in backward countries, not only without the assistance of the advanced countries but against their ruthless and implacable resistance. It was thereby rendered inevitable that the process should be difficult, painful, and violent. But the process does go forward—of that the majestic successes of the Soviet economy, despite all the strains and trials to which it has been subjected in these

> years of Hot and Cold wars, is irrefutable proof—and the hopes of mankind for a better future go with it. For the first time in history we can say that violence is being used to protect regimes which are doing their utmost to create a society which will be able to dispense with violence. That makes all the difference."

This statement is at least replete with approbation of the use of violence against the American system by indirection. This statement must be read in the light of the witness' affirmative answer (T-68, 1. 35), "I consider myself a Marxist, yes." It should be read in light of the question at page 66, line 40 of the transcript. "Didn't you tell the class at the University of New Hampshire on Monday, March 22, 1954, that Socialism was inevitable in this Country?" A. "I decline to answer any question about the content of my lecture at the University of New Hampshire." Q. "What grounds?" A. "Grounds that it is irrelevant to the scope of your inquiry and an invasion of First Amendment rights."

". . .

> *Mr. Wyman*: Isn't it true, Mr. Sweezy, that the socialism you have been advocating, exists only in Communist countries today?
>
> *Mr. Sweezy*: Yes, that is true. Britain hasn't actually succeeded yet in establishing a socialist system.
>
> ". . ." (T. 35, 1. 18-21).

The attention of the Supreme Court of New Hampshire was respectfully and particularly directed to the questions and answers which followed the above quotations, through line 10, page 93 of the transcript. It does not need to be taken by assumption to postulate that the truthful, objective education of youth in our State University is a matter of prime importance to the welfare of The State of New Hampshire, the nation, and hence of prime concern to the Legislature of this State.

See *Adler* v. *Board of Education*, 342 U.S., 485, 493. (1952)

Adolescents in most instances cannot be in a position to adequately evaluate doctrinal presentations either from experience in life or scholarly research. They are just not old enough to know whether it is really true that a nation is good or a political philosophy is good or whether they are evil. For an admitted Marxist to flatly state to assembled youth that Socialism in the United States of America is inevitable, raises all manner of relevant questions particularly after the earlier characterizations by Appellant of what he meant by use of the term. It makes little difference that the statement may have been enveloped in the pedagogical pretense that it was set up as one man's point of view, knock it down if you can. It is certainly competent and entirely relevant to ask whether such a Marxist in fact explained to the class what he meant them to understand by the word "Socialism."

Socialism to a Marxist may mean an entirely different social structure of society than the socialism of a follower of Norman Thomas or the broad general position on socialism of some of the British Labor Party adherents. It may mean a structure to be arrived at through violence if necessary to change from capitalism. The point, is, what actually was said to these students? Was there advocacy of alteration of our form of government through ultimate use of force and violence if need be? Can it be possible that in this State the so-called rights of privacy contended by defendant would extend the oft-tortured concept of academic freedom to close the classrooms of New Hampshire to legislative investigation? The defendant asked the Supreme Court of New Hampshire to rule as a matter of law that a legislative committee cannot cross-examine a witness concerning the content of his lecturing once the witness has denied that he advocated subversive doctrine. If this type of argument be sanctioned by a rule of law, all any witness would have to do would be to make the statement under oath that he had not advocated subversive doctrine and from then on to find the facts it would be necessary to pit student informer against teacher or shut the door on formal inquiry. It is perfectly possible that a witness

might aver under oath that he had not advocated subversive doctrine when in fact he had done so, whether intentionally or otherwise. The fact-finding process in such a situation requires questioning under oath. And while it is common knowledge that an oath under our juridical system means nothing to a communist; that for them there is no compulsive force of conscience, faith in Almighty God, or other Christian responsibility to impel compliance with capitalistic law; nevertheless, the dangers inherent in perjury are a practical encouragement to truthful disclosures.

The New Hampshire Legislature has made it a crime in this State to aid, advocate, teach, or abet even the alteration of our constitutional form of government if the formula includes ultimate resort to force and violence if necessary. RSA NH 588 (Laws 1951, chapter 193). One of the most common approaches utilized by present and former communists to the question of force and violence in answering the questions of legislative or congressional investigators is to say that they never saw or urged anything having to do with forcible overthrow of the government of state or nation and if they had they would not have had anything to do with the Communist Party. Perhaps it is not for counsel at this point to speculate whether such people kept up with current events during their years of communist predeliction but is it not possible to advocate resort to force and violence to destroy the capitalistic system and hence the Republic of the United States of America (and *a fortiori* the Sovereign State of New Hampshire) by indirection?* Is it not subversive to advocate the laying down of our arms if a calculated preliminary to occupation by the Soviet Union? If violence to preserve capitalism is "doubly damned" but violence to establish the type of social order of which the defendant has written and spoken is praised, is not the New Hampshire Legislature entitled to inquire when such double talk enshrouds representations of inevitable "Socialism" to boys and girls at our State University? It is interesting to balance these questions with the Appel-

* See, *U. S. News & World Report*, Issue of Oct. 21, 1955, pp. 37-41; 138

lant's background, which is a matter of public record, and the Jurisdictional Statement, p. 5, that "Dr. Sweezy is a distinguished economist and a well-known authority upon socialism, with a reputation for honesty and integrity in the academic profession." This statement is made by counsel for the Appellant and by another witness (Daggett) himself under investigation and in Court at the time.

The Appellant on his own exceptions before the New Hampshire Supreme Court raised the issue of possibilities. He contends that no possible answer to questions about the lecture on March 22, 1954 could relate to subversion as defined in New Hampshire's basic law. Appellant said he did not advocate nor in any way further the aim of overthrow of constitutional government by force and violence. (T-59, l. 2). Being aware of the Appellant's background and knowing of the compulsory attendance of the students in this class at a State-supported institution is it not relevant and reasonable for the legislature to ask, what did he say? What did he take with him into the lecture room? What was distributed to the students? Was the mimeographed subsequent reconstruction of the notes contained in the lecture, and hence of its content, all that was said? Was the witness then a member of any organization cited by the United States Attorney General as subversive or communist controlled or required by proceedings before the Subversive Activities Control Board to register as such? The language of the Supreme Court of New Hampshire in *Nelson* v. *Wyman*, 99 N. H. 33, appears to provide an answer:

> ". . . The inquiry is not confined to an investigation of violations of the act but includes a determination of whether there are presently in this state . . . persons whose acts are not criminal but who are classified as subversive persons because they either *not* 'knowingly and wilfully' are . . . aiding in the commission of acts intended to . . . alter existing government by force or violence. . . . or are advocating or teaching the commission of such acts . . . even though they do *not* do so 'knowingly and wilfully' . . . , or are members of sub-

versive organizations *not* knowing them to be such . . . " (P. 37)

"Among the matters as to which the Attorney General was directed to inquire were the commission of, or attempts to commit, acts intended to overthrow the government by force or violence after August 1, 1951, *whether or not done 'knowingly and wilfully'* . . . "(P. 39) [Emphasis Supplied]

Did this witness tell students at the University of New Hampshire in this lecture that Red China was a land of peace, and Formosa a land of war; that the Soviet Union and world communism wanted peace, whereas the barons of Wall Street want war; that the only way to assure world peace was to lay down our arms and become one world with communism, living under a socialistic, classless society with the profit motive removed? Was all of this, if said (and no contention is made here that it was in fact said, but these propositions are discussed merely for reaching the possibilities raised by the Appellant himself) was it all part of a plan to orient our youth toward abolition of a constitutional republic with approval of violence for these purposes but not of violence in defense of capitalism?

III. Fact-finding inquiry to determine the nature and extent of potential danger is a question of policy for the legislative branch of government.

How far does human conduct under New Hampshire laws have to extend before one reaches the twilight zone warranting questioning to determine the true facts? Does a witness have to actually stand up and say, "I urge you to go out and march on Wall Street, to overthrow the Supreme Court and the Legislature and the Government by force and arms if they won't abdicate peaceably, and set up a people's government, a world government of the proletariat?" Is it not probable that substantial education, such as is this Appellant's unique qualification made available to him in his life by the opportunities of self-advance-

ment under the same capitalistic system which he so often and so publicly deprecates, enables a vastly more subtle approach? And if such a vastly more subtle approach should be used in a state-supported institution of learning, is it not a legitimate concern of the Legislature?

See: *Gitlow* v. *New York*, 268 U.S. 652 (1925)
Whitney v. *California*, 274 U.S. 356, 71 L. Ed. 1095 (1927)

It is of vital consequence that it be recognized that the Appellant Sweezy was not on trial in the course of his original committee questioning. No charges had been brought against him. He was only a witness, not a defendant. The questioning was in private but could have been in public had appellant desired. He was represented by counsel of his own choice at his second hearing. He did not wish counsel at the first. He could not be compelled to incriminate himself out of his own mouth because he always had (and was so instructed by the Attorney General and by his own counsel) available to him his constitutional privilege against self-incrimination.

Cf: *Rogers* v. *U. S.* 179 F. 2d 559, 340 U.S. 367, 95 L. Ed. 344. (1951)

IV. An investigating committee does not have the burden of producing evidence of ultimate facts before its questions become pertinent.

In the course of questioning, Appellant Sweezy maintained that beyond denying that he had advocated subversion in his lecture and affirming that he is not and never has been a member of the Communist Party, he was not obliged to answer further questions until the committee produced evidence before him to the contrary. The Supreme Court of New Hampshire rejected this contention, saying:

"'It is not always easy to distinguish teaching or advocacy in the sense of incitement from teaching or advocacy

in the sense of exposition or explanation.' *Dennis* v. *United States*, 341 U.S. 494, 572. The distinction is one of fact. The defendant's denial that he advocated, taught or in any way furthered the aim of overthrowing constitutional government by force or violence in his lecture is simply his determination of that fact, which the committee could believe or not as it saw fit. The witness could not by his answer impose upon the investigating committee the burden of producing evidence that a doctrine aimed at the violent overthrow of existing government was in fact advocated by him before it could inquire of him concerning the lecture." *Wyman, Attorney General* v. *Paul M. Sweezy*, 100 N.H. 102, 108, 121 A. 2d 783 (dec'd Mar. 6, 1956)

While the Attorney General as a delegated legislative committee was ordered to find out whether there were subversive persons or subversive activity as defined in RSA 588 (Laws 1951, chapter 193) in the State of New Hampshire, he was also directed to ascertain whether there were any subversive organizations operating within the state. To find out whether an organization is or was subversive it is necessary, among other things, to inquire whether it has within its membership persons who urge resort to force and violence if necessary to alter our government. The Preamble of the Act itself indicated the Legislature considered communists to be subversive *per se*. No more than a reading of the Preamble is necessary to establish this proposition beyond reasonable doubt. In fact it is no longer open to argument in New Hampshire that the Communist Party or communism itself is a mere matter of legitimate political affiliation, activity or expression. *Preamble, Laws 1951, chapter 193; Cf., Communist Control Act of 1954*, 50 U.S.C. 841. Even were a person to assert today that he was a new kind of communist who did not believe in or advocate resort to force and violence to effect a communist America, his protestations in light of the record and the law in New Hampshire should reasonably receive short shrift by any responsible finder of fact.

See: *American Communications Ass'n.* v. *Douds*, 339 U.S. 382, 408, 94 L. Ed. 925, 949 (1950); (Mr. Chief Justice Vinson)

"If the principle that one may under no circumstances be required to state his beliefs on any subject nor suffer the loss of any right or privilege because of his beliefs be a valid one, its application in other possible situations becomes relevant. Suppose, for example, that a federal statute provides that no person may become a member of the Secret Service force asigned to protect the President, unless he swears that he does not believe in assassination of the President. Is this beyond the power of congress, whatever the need revealed by its investigations? An affirmative answer hardly commends itself to reason unless, indeed, the Bill of Rights has been converted into a "suicide pact. ... ."

". . . Second, the public interest at stake in ascertaining one's beliefs cannot automatically be assigned at zero without consideration of the circumstances of the inquiry. If it is admitted that beliefs are springs to action, it becomes highly relevant whether the person who is asked whether he believes in overthrow of the Government by force is a general with 500,000 men at his command or a village constable. To argue that because the latter may not be asked his beliefs the former must *necessarily* be exempt is to make a fetish of beliefs. The answer to the implication that if this statute is upheld 'then the power of government over beliefs is as unlimited as its power over conduct and the way is open to force disclosure of attitudes held on all manner of social, economic, moral and political issues,' [*Post*, p. 438], is that that result does not follow "while this court sits." The circumstances giving rise to the inquiry, then, are likewise factors to be weighed by the courts, giving due weight, of course, to the congressional judgment concerning the need. In short, the problem of balancing the conflicting individual and national interests involved is no different from the prob-

lem presented by proscriptions based upon political affiliations.

"Insofar as a distinction between beliefs and political affiliations is based upon absence of any 'overt act' in the former case, it is relevant, if at all, in connection with problems of proof. In proving one sworn falsely that he is not a Communist, the act of joining the Party is crucial: Proof that one lied in swearing that he does not believe in overthrow of the government by force, on the other hand must, consist in proof of his mental state. To that extent they differ.

"To state the difference, however, is but to recognize that while objective facts may be proved directly, the state of a man's mind must be inferred from the things he says or does. Of course, we agree that the courts cannot 'ascertain the thought that has had no outward manifestation.' But courts and juries every day pass upon knowledge, belief and intent—the state of men's minds—having before them no more than evidence of their words and conduct, from which, in ordinary human experience, mental condition may be inferred. . . ."

In regard to the Progressive Party, as perhaps with any "Party" or group or assemblage, the question immediately is raised as to who made its policies? Were there subversives in it? What were the policies? How many communists or former communists were in it? Was it a subversive organization within the meaning of New Hampshire law? How can the true facts be found if answers are not compelled under oath?

The transcript shows the names of a number of individuals about whom Mr. Sweezy was asked in respect to activities within the Progressive Party. Such questions and answers specifically are found in the transcript at page 53, line 25. It is not believed reasonable nor necessary that a legislative committee should be required to aver under oath to a witness that these individuals were or had been members of the Communist Party, or, worse

yet, to produce the transcripts containing such evidence, thus informing the witness who said what and possibly subjecting such individuals to recriminations of the most direct order.

See: *Marshall* v. *United States*, 176 F. 2d 473. (1950)

To find out whether known communists or individuals reported to be communists were operating within the Progressive Citizens of America and or within the Progressive Party at a policy level, is quite pertinent. The association of individuals acting in concert with communists in an organization over any protracted period of time is at least an indication that communist influence was known because a communist by definition (if he is indeed a real communist) is subject to the Party line and is not a free agent nor a free individual, but on the contrary is committed to act in furtherance of the Soviet communist conspiracy to subvert and enslave the world. This sounds not a little fantastic in New Hampshire but when the facts on the pages of history are added up since 1917, they paint a grimly corroborative picture. As the Supreme Court of New Hampshire has held, in *Nelson* v. *Wyman*, 99 N.H. 33, the Legislature of New Hampshire has the power to direct a committee to ask any citizen in this state relevant questions concerning his activities in association with communists or with any organization when that organization is communist or communist-controlled, or operates as a communist front or is believed by the committee to so operate.

See: *Dunne* v. *United States*, 138 F. 2d 137; Cert. Den. 320 U.S. 790, 88 L. Ed. 476; Rehearing den. 320 U.S. 814, 88 L. Ed. 492; Motion for Leave to File Second Petition for Rehearing granted and Rehearing denied, 320 U.S. 815, 88 L. Ed. 493 (1943).

Emspak v. *U.S.*, 95 F. Supp. 1012 (1951); 91 U.S. App. D.C. 378, 203 F. 2d 54, 349 U.S. 190; 99 L. Ed. 997 (1955)

Lawson v. *U. S.*, 176 F. 2d 49, Cert. Den. 339 U.S.

934, 94 L. Ed. 1352; Rehearing denied 339 U.S. 972, 94 L. Ed. 1379 (1950)

Rumely v. *U.S.*, 345 U.S. 41 (1953)

United States v. *Fitzpatrick*, 96 F. Supp. 491, 493 (1951)

United States v. *Josephson*, 165 F. 2d 82 (1947)

United States v. *Petrillo*, 332 U.S. 1 (1947)

United States v. *Thomas*, 49 F. Supp. 547 (1943)

The mere asking of relevant questions pursuant to a law which the Supreme Court of New Hampshire has held to be constitutional does not abridge either freedom of speech or freedom of religion or any of the provisions of the Bill of Rights. *Barsky* v. *United States*, 167 F. 2d 241, (App. DC 1948) Cert. Den. 334 U.S. 843; *Dennis* v. *U. S.* 341 U.S. 494 (1951); *Dunne* v. *United States, supra; Emspak* v. *U. S.*, 349 U. S. 190 (1955); *Nelson* v. *Wyman*, 99 N. H. 33, 105 A. 2d. 756 (1954); *Townsend* v. *U. S.*, 95 F. 2d 352 (1938). How can the Legislature do its work if it is powerless to compel answers in such a field?

Cf., McGrain v. *Daugherty*, 273 U.S. 135 (1927)
United States v. *Bryan*, 72 F. Supp. 58 (1947)

To rule as a matter of law that the Legislature of The State of New Hampshire is powerless to inquire of any lecturer as to what he actually said at a state institution when that same Legislature by separation of powers is responsible for finding facts in aid of legislation, is to torture the First Amendment to indulge the paranoia of academic freedom extremists. Confining the problem to the precise factual situation presented on this record, we find a State institution supported by State tax-raised funds and the preposterous contention of the Appellant that a legislative committee engaged in a subversive investigation is without authority to cross-examine witnesses as to the content of their lectures thereat. This cannot be sound morally or legally. In fact, it is so manifestly unsound and the consequences of a ruling prohibiting such questioning would be so disastrous in its impact.

not only upon affairs in this State but all across the nation, that it is difficult to believe the contention to be raised in seriousness. Even the most liberal advocates of academic freedom do not contend that a legislative committee is powerless to ask pertinent questions about what goes on in the classroom.

See: Opinion of the Justices, 96 N. H. 530 (1950)
Marcello v. *U. S.*, 196 F. 2d 437 (1952)
U. S. v. *Di Carlo*, 102 F. Supp. 597 (1952)

The problem of whether such an investigation should be undertaken in the first place is one of policy for the Legislature, not for the judiciary. It is to the Legislature that most of the arguments of appellant should properly be addressed.

V. The witness must respond to a pertinent question or exercise proper constitutional reason for refusal.

Appellant also contended in refusing to answer questions relating to named individuals active in the Progressive Party in earlier years in New Hampshire that the committee must first identify such individuals as subversive before he was required to answer. On this point the Supreme Court of New Hampshire said, in emphasizing the obligation of the committee to investigate to accumulate facts seeking to find out whether or not the Progressive Party, as such, is or was Communist controlled in New Hampshire:

> "It is on information of this sort that a determination concerning the nature of an organization may be made by a legislative investigating committee. Whether the persons referred to in the questions were or were not in fact Communist Party members or subversive persons is not decisive of the issue of relevancy and the defendant was not entitled to proof of that fact before being required to answer. The questions called for answers concerning the membership or participation of named persons in the Progressive Party which, if given, would aid the Attorney General in determin-

ing whether that Party and its predecessor are or were subversive organizations. They were accordingly relevant to the subject matter of the investigation." *Wyman, Attorney General* v. *Paul M. Sweezy*, 100 N.H. 103; 112. (dec'd, Mar. 6, 1956)

It should always be remembered that if there is nothing subversive involved in his activities all a witness needs to do is say so *and explain*, but he has no right in our judicial and constitutional system to refuse to answer a *pertinent* question on any basis other than that a truthful answer might incriminate him. *The mere questioning is not censorship*. The mere asking of questions is not indictment and it is not a charge. If the witness is within the zone of lawful conduct as interpreted by the highest courts of our State and Nation, his testimony in substance can always be summarized as, "Sure, I've said these things—so what?" but he must answer.

It is impossible to ask a single all-embracing question that would present the entire picture in this type of investigation. Each series of questions involve steps in a process of deductive or inductive reasoning. To determine the relevancy of any particular isolated question, it is both reasonable and quite necessary that it be considered in light of the context of the group of which it is an essential part.

VI. Being a fact-finding investigation, no criminal prosecution is involved and Pennsylvania v. Nelson is not applicable.

There remains for consideration Appellant's fourth contention in his Jurisdictional Statement that both the New Hampshire Subversive Activities Act of 1951 (RSA 588) and the Resolutions calling for a legislative fact-finding investigation are invalid by reason of the decision of this Honorable Court in *Pennsylvania* v. *Nelson*, 350 U.S. 497, 100 L. Ed. 415. For the purposes of a decision in clarification of the precise holding in the Steve Nelson case, it is believed that other things being equal, a decision on this point in the principal case would be desirable. *However*, the case

before the Court on Appellant's Jurisdictional Statement does not involve a criminal prosecution. It does not involve an attempt by a State to enforce a law making it a crime to seek to overthrow the government of the United States.

All that is involved here is the right of a State to investigate in aid of legislation. Nothing in *Pennsylvania* v. *Nelson* remotely purports to invalidate state legislative *investigations*. In fact, in the decision in *Pennsylvania* v. *Nelson*, this Honorable Court was quite careful to point out that it did not void provisions of State law insofar as they made it a crime in the States to attempt to overthrow the Federal Government by unlawful means, but merely suspended their enforceability so long as the Federal *Smith Act* remained on the books. The decision in *Pennsylvania* v. *Nelson* did not seek to invalidate nor even suspend State laws aimed at sedition against the *States* themselves. Chief Justice Warren, writing for the majority, expressly said:

> "The precise holding of the court, and all that is before us for review, is that the Smith Act of 1940, as amended in 1948, which prohibits the knowing advocacy of the overthrow of the government of the United States by force and violence, supersedes the enforceability of the Pennsylvania Sedition Act which proscribes the same conduct." 350 U.S. 497, 499.

So far as Appellant in his Jurisdictional Statement at page 32 asserts that a State investigation after the Steve Nelson decision would serve no legislative purpose, it is obvious that there are a plethora of avenues to permissive legislation by a State as a result of facts found in such an investigation and these might be laws which in no way, shape or manner would offend the decision in *Pennsylvania* v. *Nelson*. For example, a State legislature might wish, for State purposes, to broaden or change its local immunity statute. It might wish to provide for a State agency before which organizations operating within the State in corporate form and cited by a fact-finding committee, should appear to determine whether or not their charters should be revoked as a consequence

of advocacy of overthrow of the State government by force and violence. It might wish to enact legislation providing for a permanent staffing of its Attorney General's office with personnel in a subversive division with appropriate powers, duties and authority. All these and many more legislative possibilities within a State, depending upon the facts, justify beyond question the statement that a State legislature is entitled to use the fact-finding process (which, after all, must be the very foundation of legislation) as an aid to determining whether legislation in no wise outlawed by *Pennsylvania* v. *Nelson* is needed within the State.

See: *Watkins* v. *United States*, CADC April 23, 1956, 24 U.S. Law Week 2497.

Again and again, Appellant and too many others in this country, have raised the smokescreen that such investigations stultify freedom of speech and block the channels of public discussion. This same distortion of fact and self-serving contentious overplay appear in the Conclusion to the Jurisdictional Statement at page 32, where Appellant asserts that the power of legislative inquiry in New Hampshire has been used to block public discussion in the academic community and in the arena of political organization. This is completely untrue and no one knows it any better than Appellant.

Nothing in the mere asking of questions blocks public discussion nor suppresses free speech. How can there be suppression when a witness is merely asked what he said? Why shouldn't he tell the State what he said? He may simply answer if it was not unlawful. If not, he has available his privilege against self-incrimination. But beyond that he may not refuse to answer.

> "The United States Supreme Court has consistently recognized the inherent value of free discourse. However, it is settled that the right to free speech is not an unlimited, unqualified right, but, as the Court said in *Dennis*, 341 U.S. at page 503, 71 S. Ct. at page 864: '. . . the societal value of speech must, on occasion, be subordinated to other values

and considerations.'" *United States* v. *Lightfoot*, 228 F. 2d 861, 869; Certiorari granted 350 U. S.———, 76 S. Ct. 543, (March 26, 1956)

See: *State* v. *Chaplinsky*, 91 N. H. 310 (1941)

Schenck v. *United States*, 249 U.S. 47 (1919)

But even the above quotation is unduly somber as applied to the principal case because the quotation deals with substantive law and the principal case only with investigation. It cannot possibly restrict freedom of speech to be required merely to tell what was said. Persons in the position of Appellant are still free to give any lecture or make any statement or take any material with them, subject always to the limitation on that conduct which becomes criminal as specified in the *Subversive Activities Law of the State of New Hampshire*, (RSA 588) as well as to the restriction of certain other statutes in New Hampshire, such as RSA 587:32, which makes it a crime in New Hampshire to

> ". . . advocate or encourage by any act or in any manner, or bring into this state, prepare, produce, publish, distribute, or have in possession for distribution, any printed or written matter of any kind, including pictures, which so advocates, encourages, or favors the overthrow of, or change in the form of, the government of the United States of this state or any subdivision thereof, or the interference with any public or private right by force, unlawful means, or act of violence." . . .

Even granting that *Pennsylvania* v. *Nelson*, (barring new federal legislation) strikes from such a statute as that immediately set forth above the words, "the government of the United States or" it has been held explicitly by the highest Court of the State of New Hampshire that the Legislature of the State of New Hampshire has the right to conduct a fact-finding investigation to determine whether or not such unlawful activities have taken place. The question of policy as to whether there is to be such an investigation—originally or by continuation—is for the Legislature, not the judiciary. *Kahn* v. *Wyman*, 100 N. H.

——, (dec'd. June 8, 1956), Appendix Jurisdictional Statement, p. 63.

Appellant has not claimed the privilege against self-incrimination in refusing to answer. On the contrary, he has wilfully refused to answer the questions of the Legislature of New Hampshire on the sole grounds that the mere asking of these questions violates the First and Fourteenth Amendments of the Constitution of the United States. He also alleged that certain very similar constitutional rights under the Constitution of New Hampshire were also violated, but this question has been foreclosed by the negative answer of the Supreme Court of New Hampshire in the case from which this appeal to this Honorable Court is taken.

CONCLUSION

This Honorable Court has itself said in *Adler* v. *Board of Education*, 342 U.S. 485, 493:

> ". . . A teacher works in a sensitive area in a classroom. There he shapes the attitude of young minds toward the society in which they live. In this the state has a vital concern. It must preserve the integrity of the schools."

The principal case involves nothing more and nothing less than an effort of a State legislature to find out by relevant questioning whether the integrity of its schools has been preserved. Neither the suppression of free speech nor stultification of individual initiative nor invasion of constitutional civil liberties is involved in the questioning presented on the record in the principal case. Considering the background of Appellant as shown in the transcripts which are themselves a part of the record in the principal case, including his own separate writings and his own answers, it is entirely reasonable and proper that the State should investigate to determine whether he advocated subversive doctrine to compulsory adolescent attendants at his lectures at a State-supported University. The consequences of denying to a State the right to make such reasonable inquiry would be to leave un-

restricted and practically immune the power of a State legislature to investigate the teachings, writings and other activities within the classrooms of America.

The academic world in its daily work is as much subject to the rules and mores of our society as any other segment. Advocacy of subversive doctrine is a violation of law in New Hampshire. The right of a State legislature to compel a witness to answer relevant questions in an effort to determine whether there had been advocacy of such subversive doctrine is not to be met by empirical denials and refusals to accede to a reasonable latitude of fact-finding examination. A witness in the position of Appellant, faced with a relevant question, must either answer or claim his privilege against self-incrimination in refusing. To sanction any other course is to undermine the very structure of legislative process. No substantial federal question is involved in this case.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By: LOUIS C. WYMAN, Attorney General

July 12, 1956.

BRIEF FOR APPELLEE

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OCTOBER TERM 1956

No. 171

PAUL M. SWEEZY, Appellant

v.

LOUIS C. WYMAN,

Attorney General of New Hampshire, Appellee

Appeal from the Supreme Court of The State of New Hampshire

BRIEF FOR APPELLEE

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1956

No. 175

PAUL M. SWEEZY, Appellant

v.

LOUIS C. WYMAN

Attorney General of New Hampshire, Appellee

Appeal from the Supreme Court of
The State of New Hampshire

BRIEF FOR APPELLEE

QUESTIONS PRESENTED

I. Are state legislatures precluded from fact-finding investigation in aid of possible legislation relative to subversive activities within their borders, by the decision of this Court in *Pennsylvania v. Nelson*, 350 U. S. 497 (1956)?

II. Does the First Amendment to the Federal Constitution confer such a right of personal privacy as permits a witness to refuse to answer questions otherwise relevant to a subject constitutionally under fact-finding investigation by a State Legislature?

III. May a witness, merely by a general denial of subversive activity or of knowledge thereof, foreclose further pertinent questioning into his activities in the nature of cross-examination by a legislative fact-finding committee?

STATEMENT OF THE CASE

This is an appeal by Paul M. Sweezy from a decision of the Supreme Court of New Hampshire directing that he answer certain questions of a legislative fact-finding committee investigating subversive activities in New Hampshire. The Supreme Court of New Hampshire had previously found the investigation constitutional. *Nelson* v. *Wyman*, 99 N. H. 33 (1954). By the terms of the resolution authorizing the investigation Laws 1953 chapter 307, the committee (Attorney General) was directed to find out whether there were subversive persons or subversive organizations in New Hampshire; to prosecute those appearing to have violated the law; and to make recommendations concerning further legislation considered necessary in this field.

The questions directed to Sweezy and involved in this case were found by the Court to be relevant and pertinent to the resolution and to the basic state law (RSA 588). They appear, together with the reasons assigned for the refusals to answer, in the Record at pp. 202-208. They were concerned with two general subjects: (1) the actual content of a required lecture at the State University, (2) persons active at the policy level in the Progressive Citizens of America and the Progressive Party. Beyond a general denial of advocacy of force and violence Sweezy declined to answer all questions concerning the content of his lecture at the State University (R. 70), and many questions directed to discovery of activities of named individuals within the Progressive Party and the Progressive Citizens of America (R. 63). He further refused to answer the question of whether he believed in Communism (R. 77, 205) as well as many questions directed to disclosure of the identity of certain named individuals independent of their affiliation with the Progressive Party or its predecessor or any other organization (R. 100). The questions

to which the court proceeding relates and which are involved in the present appeal appears in the Record at pp. 202-208. Sweezy was questioned twice. The first time on January 8, 1954 and the second time on June 3, 1954. On both occasions the questioning took place in private according to the Rules of Procedure (Appendix E). The witness did not request a public hearing. On the occasion of the January hearing Sweezy did not wish counsel and declined to answer many questions relating to the Progressive Party (R. 33-35, 49-57) or in regard to his acquaintance with or knowledge of several named individuals. At the conclusion of this hearing the witness read a statement into the record in which he stated he would decline to answer questions concerning ". . . . ideas, beliefs and associations which could not possibly be pertinent to the matter here under inquiry and or which seem to me to invade the freedoms guaranteed by the First Amendment to the United States Constitution . . ." (R. 62). At the first hearing Sweezy testified that he did not know any members of the Communist Party in New Hampshire at that time (R. 21); that he knew Elba Chase Nelson (long-time secretary of the Communist Party in New Hampshire) but that he never knew her as a member of the Party (R. 22); that he was a former member of the American League Against War and Fascism (R. 24); that he did not remember whether he was once a member of the committee sponsoring the Citizens Committee for Harry Bridges (R. 25); that he helped in the defense of Carl Marzani (R. 26); that he would not dispute but what he was Chairman of the Committee to Defend Marzani (R. 26); that he was in the Office of Strategic Services during the war with Marzani and that Marzani was convicted in 1947 for concealing Communist affiliations while working for the Federal Government (R. 26); that in 1949 he was a sponsor and speaker at the Scientific and Cultural Conference for World Peace held by the National Council of the Arts, Sciences and Professions in New York City (R. 27); that he signed an open letter for support of the Civil Rights Congress (R. 29, 30); that he did not remember a letter in defense of the Moscow Purge Trails reported in the "Daily Worker" on February 9, 1937 (R. 32);

that he had frequently contributed to and written for "Science and Society" (R. 33); that he did not remember signing an open letter to Congress urging the defeat of President Truman's Arms Program in 1949, released by the Conference on Peaceful Alternatives to the Atlantic Pact.

Between the time of the first questioning of Sweezy, and the second in June of 1954, committee examination of publications by Sweezy revealed that in the "Monthly Review" (co-edited by Sweezy and one Leo Huberman) reprint, Pamphlet Series No. 6, (1953) Sweezy had written with Huberman a statement concerning the use of force and violence which appears at Page 20 of the Argument in this brief. Subsequently it was learned that Sweezy had delivered a lecture at a required course in "Humanities" at the University of New Hampshire on March 22, 1954. He was recalled in private session on June 3, 1954, on this occasion appearing with counsel.

In the course of his testimony on the second occasion Sweezy declined to answer no less than twenty-four questions and did not remember or did not know concerning answers to more than a dozen other questions. He testified that he considered himself a Marxist (R. 82) and reaffirmed the content of the writing which appears above (R. 108). In regard to questions directed to him concerning the lecture at the University of New Hampshire he again generally denied advocating or furthering the aim of overthrowing constitutional government by force and violence and said, "Aside from that I have nothing I want to say about the lecture in question." (R. 70) At this time Sweezy testified that he did not know of his own personal knowledge who is or is not a member of the Communist Party (R. 64), and that the Progressive Citizens of America was the forerunner of the Progressive Party in New Hampshire (R. 64). He then declined to answer questions directed to the names of individuals and/or their activities in the Progressive Citizens of America and later the Progressive Party (R. 65). He acknowledged attending a meeting also attended by persons known to him to be Communists in 1938 or 1939 in the vicinity of Boston, Massachusetts and that at that time he spent the evening with Granville Hicks and

Phil Frankfeld, but that he could not recall any discussion of overthrow of the government by force and violence (R. 79). At page 94 of the Record, asked whether he knew personally any Communists who do not have the intention of overthrow of the capitalist system by force and violence, Sweezy replied: "Let me put on the record again that personally I know very few Communists as such. I know quite a few people who may perfectly well be Communists and enough of them over a period of years so that I think I have some idea of what Communists think like and act like, but they are people whose membership in the Communist Party is not personally known to me; and for obvious reasons I would not testify about them as Communists without knowing." (R. 95) He acknowledged that while in the O.S.S. in Germany he met quite a few Communists at the closing stages of the war and testified that he had no doubt that Mrs. Nelson (Elba Chase Nelson) was a Communist prior to 1951 but that he had no opinion on whether Mrs. Nelson was a Communist at the time of the questioning (R. 113). Asked what he would require for a person to be personally known to him as Communist, Sweezy stated that it would have to be "a person who has been publicly identified and has been a spokesman for the Communist Party in one country or another and whom I personally have known . . . somebody who has been a Communist before the public whom I have known . . ." (R. 113). He refused to answer the question whether he believed in Communism (R. 77), but later, before the Superior Court, in again refusing he said "If the definition and characterization of Communism are those presented in the preamble to the 1951 Act, the answer to that is no. Beyond that, however, I decline to answer the question on advice of counsel and for reasons given by counsel." (R. 205)

Following the conclusion of the second hearing a petition was prepared and filed by the Attorney General with the Superior Court of Merrimack County seeking a court continuance of the questioning and an order directing the witness to answer or be found in contempt of court according to the provisions of New Hampshire law in such cases. (RSA 491:19, 20) At this time, after extensive argument between counsel consuming the better

part of two days, Sweezy took the stand in the New Hampshire Superior Court and again refused to answer the questions involved in this case (R. 201). These questions and the witness' refusal to answer appear in the Record at pages 201-208. At no time did the witness base his refusal to answer on the privilege against self-incrimination, but confined it solely to contentions of irrelevancy and violations of the First and Fourteenth Amendments of the Federal Constitution and their counterpart in the State Constitution. Following Sweezy's refusals the Court found him in contempt of court and he was admitted to bail in the sum of one thousand dollars pending his appeal to the Supreme Court of New Hampshire (R. 208).

On March 6, 1956, the New Hampshire Supreme Court in an opinion appearing at page 210 of the Record, found the questions to have been relevant and pertinent, to have been authorized by the Resolution and the investigation, and to violate no provision of the State or the Federal Constitutions. Subsequent to the decision this Court rendered its opinion in *Pennsylvania* v. *Nelson*, 350 U. S. 497, on April 2, 1956, and defendant moved for a rehearing before the New Hampshire Supreme Court on the specific ground of supercession. This motion was denied and by certificate the New Hampshire Supreme Court certified in this case that it has specifically held that the State statutes were not invalidated by the Nelson decision. See appellant's brief, Appendix C, page 78. Subsequently this point was reaffirmed by the New Hampshire Supreme Court in *Kahn* v. *Wyman*, 100 N. H. 245 (Dec'd. June 8, 1956). (Appellant's Brief, appendix B.)

SUMMARY OF ARGUMENT

This Court's decision in *Pennsylvania* v. *Nelson*, 350 U. S. 497 (1956), was confined by express terms to advocacy of the overthrow of the government of the *United States* by force and violence. The decision did not purport to cover those separable provisions of State law making it a crime to seek to destroy the *State* government by force and violence or other unlawful means. New Hampshire's Subversive Activities Law (RSA 588) is subject to separability. It is worded in the alternative and applies

proscription of unlawful attempts to overthrow the government of the United States OR of the State of New Hampshire OR either of them (RSA 588).

The decision in *Pennsylvania* v. *Nelson*, *supra*, was couched in terms of "suspending the enforceability" of state laws imposing criminal sanctions on such advocacy or activity directed against the *federal* government. This concept is distinct from voiding State statutes completely. If the status of those portions of State law relating to advocacy of overthrow of the *federal* government by force and violence are suspended and not void State legislatures may clearly continue to enact laws on the subject even if unable to enforce them until such time as the Federal government has abandoned the field or enacted recognition of concurrence.

In addition, among the many laws which States may still enact and enforce in the field of sedition are those relating to subversion directed against the State government alone. Seditious activity against the Federal government must unavoidably relate to the safety of each State government. This no language of any judicial decision can alter. Fact-finding in aid of State legislation of this type is still necessary for intelligent law making. Appellee admits that the State governments since the Nelson decision may no longer prosecute for violation of such parts of State law as make it criminal to advocate or overthrow solely the *federal* government by force and violence.

Without contending that the First Amendment is inapplicable to State action under certain previous decisions of this Court, and conceding for purposes of argument here its applicability to State action under the Fourteenth Amendment, it is nevertheless respectfully asserted that nothing in the record of the principal case is manifest of any action by the State of New Hampshire which suppressses, restricts, or otherwise destroys appellant's freedom of speech. Since *Dennis* v. *United States*, 341 U. S. 494 (1951) it is elemental that certain speech may constitutionally be made criminal. Included within such speech is that delivered under circumstances calculated to create a clear and probable danger to the security of State or Nation. *Gitlow* v. *New York*, 268 U. S. 652, 670 (1925). Fact-finding investigation of subver-

sive activities in New Hampshire, or any other State, or by a Congressional Committee, requires a reasonable latitude of cross-examination available to the investigating committee. Asking Sweezy what he said and did does not restrict what Sweezy said and did if otherwise lawful. If what he said or did was in fact criminal, or if he or any witness in a similar position before an investigating committee believes there is a substantial risk of prosecution for crime to give a truthful answer, the privilege against self-incrimination remains available. No claim of this privilege is here involved. Beyond this privilege within the zone of relevancy a witness in a fact-finding investigation must answer.

The New Hampshre Supreme Court has found both the investigation and the statute upon which it is predicated (RSA 588) to be constitutional. *Nelson* v. *Wyman*, 99 N. H. 33 (1954). It has also found the questions appearing in the record of this cause (R. 201-208) to have been relevant and pertinent within the law of this State. This decision under settled doctrine of this Court is conclusive of questions of relevancy for the purpose of argument here. *Albertson* v. *Millard*, 106 F. Supp. 635, 345 U. S. 242, 97 L. Ed. 983 (1953).

What Appellant seeks to accomplish by presentation of both the facts and argument in the manner in which these appear in Appellant's brief, is to raise a bogeyman of supposed suppression and repression in seeking to persuade this Court that investigation in aid of legislation ". . . deprives appellant of this right to express his views in accordance with democratic procedures or can deprive his hearers of the right to listen to such discussion." Appellant's Brief, p. 36. This is sheer nonsense. Characterizing fact-finding investigation as "inquisition" (Appellant's Brief, p. 39), interference with freedom of discussion (Appellant's Brief, p. 43), substantial abridgment of freedom of speech" (Appellant's Brief, p. 42), "an abridgment of political life and expression" (Appellant's Brief, p. 37) and a prohibition and harassment of political activity which punishes unorthodox political opinion, activity or association (Appellant's Brief, p. 31) is to unfairly and unreasonably misstate the true facts of this record or the relationship or impact of legislative in-

vestigation generally. If one thing is clear in 1957, it is that Communist activity is *not* a mere question of "political activity". See: *Amer. Comm. Assoc.* v. *Douds*, 339 U. S. 382 (1950); *Dennis* v. *U. S.*, 341 U. S. 494 (1951); Preamble, Communist Control Act of 1954, U. S. C. Title 50, Sec. 841.

Appellee respectfully contends that the statement appearing at page 17 of Appellant's Summary, that ". . . appellant answered all questions relating to the use or advocacy of force or violence, and all questions in the borderline area of Communist Party membership, activity and advocacy" is half-truth if not misstatement. Examination of the entire transcripts of Appellant's testimony indicates beyond question that his testimony in answer to questions relating to Communists, former Communists, or the activities of organizations cited as Communist controlled or infiltrated was less than candid. It cannot be that a witness may validly contend that such statements are true simply because the Committee did not itself identify persons about whom it inquired as Communists. No Committee is obliged to go to such lengths. See *Barenblatt* v. *U. S.*, (CCA DC, Jan. 3, 1957). In fact such a requirement might do serious injustice to the named individuals involved, particularly in a continuing investigation at a point at which the Committee did not feel it knew whether such was the fact or not.

The statement at page 19 of Appellant's Summary of Argument that New Hampshire statutes violate due process by arbitrarily imposing *sanctions* upon persons for innocent membership in "subversive organizations" is not supported by examination of the law. The general definition set forth in Sect. 1 of the New Hampshire Subversive Activities Law (RSA 588) imposes no sanctions. The felonies are prescribed in Sections 2 and 3. It is *not* a crime in New Hampshire for a person to be a member of an organization even one which is literally and actually subversive, unless he is a member ". . . knowing said organization to be a subversive organization. . ." (Section 3). The test is entirely individual and personal. Courteous questioning in private session such as occurred in the principal case does not violate the First Amendment's enjoinder that laws shall not abridge freedom of

speech or association. Nor does it invade or unreasonably interfere with academic freedom except in the view of a certain segment of the teaching profession whose views on this subject are so extreme as to rival their opposites in the *self-fancied savior of America* class.

If a witness has not engaged in subversive activity, in answering the questions of a fact-finding committee State or Federal, the witness should answer and is at liberty to reaffirm what he has said or done. He always has available to him the continuing protection of the privilege against self-incrimination. He cannot be forced to testify against himself. Beyond this it is surely unreasonable to permit him to merely deny knowledge of subversion and then refuse to answer further relevant questioning in an effort to ascertain what in fact he did or said. Maybe he is not telling the truth in his general denial. Perhaps in arriving at his conclusion of general denial he has taken basic facts so unrealistically as to make the conclusion itself unworthy of credibility. This is certainly true of witnesses who deny knowledge of subversion on the ground that in their view there is nothing subversive about the Communist Party or its tactics, strategy and objectives and that all such activity is mere "politics." See: "COMMUNISM: MARXISM-LENINISM Its aims Purposes, Objectives and Practices" *American Bar Association Brief "The Communist Party, Its Tactics, Strategy and Objectives"*, Chicago, 1951. *Cf.* Communist Control Act of 1954. Such views have been expressed by increasing numbers of hostile witnesses of late and would assuredly become commonplace should this Court recognize such general denials as conclusive of committee power to question further.

To give judicial credence to the argument made by Appellant in this case would be to make a roadblock of the First Amendment which would abort all legislative (or Congressional) investigation, not merely in the field of subversive activities but in other fields as well. To permit the use of the First Amendment as a reason for declination to answer gives the power to witnesses to completely thwart the investigative process, for who will decide where the boundaries may be? The proper test, as

established by decisions of many lower federal and State Courts, must and should remain one of relevancy and pertinency, assuming that an investigation is founded on a constitutional statute and meets the settled tests of separation of powers, vagueness, and delegation.

See: *United States* v. *Orman*, 207 F. 2d 148, 155 (1953);
Rumely v. *U. S.* 345 U. S. 41 (1953);
U. S. v. *Josephson*, 165 F. 2d 82 (1947), Cert. Denied 333 U. S. 838 (1948);
Barenblatt v. *U. S.* (CCADC Jan. 3, 1957);
Sacher v. *U. S.* (CCADC Jan. 1957);
Watkins v. *U. S.* (CCADC) 233 F. 2d 681, Cert. Granted 352 U. S. ——; 77 S. Ct. 62 (1956);
State v. *Arnold* (Ct. of Common Pleas of Ohio, Summit Cty. Oct. 8, 1954) 124 N. E. 2d 473 (1954);
State of Ohio v. *Morgan*, 164 Ohio St. 529, 133 N. E. 2d 104 (USSC Appeal pending, citations unavailable) (1956);
Nelson v. *Wyman*, 99 N. H. 33, 121 A. 2d 783 (1954)

In order to be able to legislate intelligently, both State Legislatures and the Congress of the United States must be informed. In order to be informed they must have facts. The fact-finding process unavoidably involves compulsory disclosure and compulsory testimony. Nothing in the mere asking of relevant questions unreasonably restricts either freedom of speech or freedom of association. *U. S.* v. *DiCarlo*, 102 F. Supp. 597 (1952); *U. S.* v. *Fitzpatrick*, 96 F. Supp. 491 (1951); *Marcello* v. *U. S.*, 196 F. 2nd 437 (1952); *Townsend* v. *U. S.*, 95 F. 2nd 352 (1938).

In those specific cases involving abuses of witnesses or methods amounting to a denial of due process of law or of equal protection of the laws there is ample basis for invalidation on specific grounds in specific cases. No abuse of method nor villification of Sweezy took place here. This was not a roving inquiry into beliefs and associations, nor a Roman Holiday with the witness. Even the questions concerning "socialism" were directly related to what the witness meant by use of the word in light of his testi-

mony that the kind of "socialism" he advocated existed "only in Communist countries today." (R. 42) It was because of such testimony that the witness was asked at the second hearing whether as a part of his lecture at the University of New Hampshire he told the students that "socialism" was inevitable in this country. If attainment of "socialism" as Sweezy uses the word included an objective of a Communist America the relevancy of such questioning is apparent. Calling a dog a cat cannot make it a cat. Was it advocacy or was it discussion?

If the transcripts are read carefully it will be seen that the witness was treated courteously, the questions were asked privately, and all in a proceeding subject to careful Rules of Procedure (Appendix E). The questions have been found to be relevant, the statutes constitutional under the laws of the State of New Hampshire, and it is respectfully submitted that this decision of the Highest Court of the State of New Hampshire should be affirmed. As the New Hampshire Supreme Court so aptly said (R. 22):

> "The restrictions upon the defendant's freedoms with which we are here concerned result from the investigation authorized by the Legislature and not from legislation directly limiting those freedoms, such as was considered in *Nelson* v. *Wyman*, 99 N. H. 33, 49, 50. 'There is a vast difference between the necessities for inquiry and the necessities for action. The latter may be only when danger is clear and present but the former is when danger is reasonably represented as potential.' *Barsky* v. *United States*, 167 F. (2d) 241, 247."

> "The problem of determining whether the threat of subversive activities in this state was sufficiently great to require an investigation and the consequent limitation upon civil liberties was resolved by the Legislature. Its adoption of the resolution authorizing the investigation was its judgment that the danger to existing government posed by subversive activities is potential. We have not changed our views of the Legislature's right to reach that judgment since our opinion

in the *Nelson* case in which we upheld the Legislature's decision to inquire of residents concerning activities aimed at the overthrow of government by force and violence, whenever they occurred. Id., 42. The limits of the investigation are subject to control by the Trial Court and therefore should offer no opportunity for any official to prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion as claimed by the defendant, nor permit the exposure of witnesses to unfavorable publicity for the mere sake of exposure." *Wyman* v. *Sweezy*, 100 N. H. 103, 114.

ARGUMENT

I. FACT-FINDING INVESTIGATION OF SUBVERSIVE ACTIVITIES BY STATE LEGISLATURES IS NOT PRECLUDED BY Pennsylvania v. Nelson, 350 U. S. 497, 100 L. Ed. 640 (1956).

The decision of this Court in *Pennsylvania* v. *Nelson*, *supra*, expressly confined itself to a holding that the Federal *Smith Act* ". . . supersedes the enforceability of the Pennsylvania Sedition Act which proscribes the same conduct." The conduct proscribed was the knowing advocacy of the overthrow of the government of the United States by force and violence. Nowhere in the decision of this cause was there even a hint by dicta that provisions of State statutes making criminal the knowing advocacy of the overthrow of the States were superceded. In fact, the majority in *Pennsylvania* v. *Nelson*, *supra*, were careful to explicitly state:

> "The precise holding of the Court and all that is before us for review is that the Smith Act of 1940 as amended in 1948 which prohibits the knowing advocacy of the overthrow of the government of the United States by force and violence supersedes the enforceability of the Pennsylvania Sedition Act which proscribes the same conduct."

The reasons assigned by the majority in support of this decision included recognition that the pattern of regulation evidenced

congressional intention to occupy the field of sedition *against the United States*. This Court quoted with approval a portion of the decision of the Pennsylvania Supreme Court to the effect that sedition *against the United States* is not a local offense but it is a crime against the nation and should be prosecuted and punished in the Federal Courts. Finally, the majority concluded that criminal prosecution and enforcement of State laws making it a crime to commit sedition *against the United States* involved a serious danger of conflict with the administration of the Federal program.

None of these reasons are applicable either in logic or law to State statutes making it a crime to seek the overthrow of the *State* government by force and violence. The New Hampshire Subversive Activities Law (RSA 588) on which the resolution authorizing the legislative fact-finding investigation involved in the principal case was based, makes it a crime in New Hampshire to commit sedition against the government of the United States *or* the government of the State of New Hampshire. This statute is subject to separability by express provision. The decision in *Pennsylvania* v. *Nelson* merely "suspended the enforceability" of that separable part of the Subversive Activities Law of New Hampshire proscribing sedition against the government of the United States—it remains a crime in New Hampshire to commit sedition against the State of New Hampshire. Furthermore, the suspension of enforceability which itself was the language of the majority in *Pennsylvania* v. *Nelson*, was specifically limited to continue only for such a period of time as the Smith Act remains Federal law.

Nowhere in the Federal Constitution can there be found authority in Congress to take from the States their reserved police powers under the Tenth Amendment to the Federal Constitution to make it a crime to seek to overthrow their own governments. It was strongly urged before this Court in the argument in *Pennsylvania* v. *Nelson* and in the Petition for Rehearing filed on April 25, 1956, that it is almost impossible to conceive of sedition or subversion against the United States that is not also unavoidably directed against the State in which the sedition

occurs. Subversive activities designed to overthrow the Federal Government by force and violence are themselves an immediate danger to the safety and constitutional security of each of the States. Beyond certain isolated locations of exclusive federal jurisdiction, such criminal activity must take place within the confines and jurisdiction of a State. In this the States are vitally concerned, particularly in view of the notorious objective of International Communism which aims at the destruction of the *capitalist system* by force and violence if necessary. Such subversive objective is not confined to any particular form of capitalist government, State or Federal.

That there is and has been local seditious activity in which local governments have been threatened by subversion or sedition against the State itself, however the proposition may be phrased, is historical fact. *Shay's Rebellion*; "A Little Rebellion" by Marion L. Starkey, published by Alfred A. Knopf (1955); "History of Exeter, New Hampshire" by C. H. Bell, published by Farwell Co. of Boston (1888) pgs. 96-99.

It is within the constitutional reserved power of the State to make it a crime within its borders to seek to destroy itself by force and violence or other unlawful means. In this connection, the States surely cannot reasonably be denied the power to investigate by fact-finding committee to seek to determine whether subversive persons or subversive activities are existent within the State and whether any new State laws are necessary in regulation thereof.

As the Department of Justice respectfully advised this Court by brief and oral argument in *Pennsylvania* v. *Nelson*, 350 U. S. 497 (1956) the States have been and can be of material help in dealing with this problem, which is common to all States as well as to the Federal Government. It is believed to be of vital importance to observe in this regard that the Federal Bureau of Investigation does not have the power to subpoena witnesses or to take testimony under oath. Furthermore, it has but a limited number of agents—some 6,200 at this writing—who are literally swamped with the responsibility of investigating multitudes of violations of the Federal law ranging from kidnapping through

armed robbery to interstate transportation of stolen vehicles to subversion against the Federal Government. The Federal Government and the F.B.I. need, should have, and are entitled to intelligent, effective partnership with State investigating agencies. The proposition does not need restatement that distinguishment between dissent and actual subversion is a complicated procedure requiring testimony under oath in the interests of probity. It is simply impossible to find the true facts in determining whether there has been subversion without requiring reluctant witnesses to testify under oath subject to penalties of perjury.

The decision in *Pennsylvania* v. *Nelson*, *supra*, should not now be broadened to include supersession of state proscription of subversive activities directed against the State governments, lest irreparable damage be done to intelligent, reasonable and conservative efforts of fact-finding agencies in the State and Federal Governments to keep abreast of the extent of subversive penetration of this nation from coast to coast. The States should not be left helpless to deal with sedition against themselves dependent entirely upon Federal investigation. Committees of the Congress operating in this field are materially limited in number and personnel. To require that the decision whether to prosecute for attempts to overthrow the State government by force and violence or unlawful means should be confined to Federal authority would be not only an unreasonable interpretation of the Tenth Amendment but would render the States helpless to deal with incipient subversive activities to the detriment of the entire country.

As was said by the American Bar Association in its brief in the case of *Communist Party of the United States of America* v. *Subversive Activities Control Board*, (No. 48, October Term 1955) and again in its brief in *Watkins* v. *United States*, (No. 261, October Term 1956):

> ". . . this country is entitled to protection—not alibis or epitaphs."

The States are equally and vitally concerned with the Federal Government in detecting unlawful attempts either to overthrow

their own government or the government of the United States. That this is true does not require documentation. Nothing in this urgently important field would be of greater benefit to Federal-State partnership in intelligently and constitutionally dealing with this continuing problem than for this Highest Court in the world to review the full impact of the decision in *Pennsylvania* v. *Nelson*, 350 U. S. 497, so as to permit this country to deal with subversive activities on a nation-wide basis of continuing restrained investigation with the Federal and State governments operating in close liaison as partners.

II. NEW HAMPSHIRE LAW AS CONSTRUED BY THE NEW HAMPSHIRE SUPREME COURT IN THE PRINCIPAL CASE DOES NOT VIOLATE THE FIRST AMENDMENT TO THE FEDERAL CONSTITUTION.

In its opinion in *Wyman* v. *Sweezy* (R. 210), the Supreme Court of New Hampshire expressly considered and adversely disposed of Appellant's contentions that the questions put to him violated the State Constitution and the First and Fourteenth Amendments to the Federal Constitution. Appellant at no time claimed the privilege against self-incrimination. No question of the Federal Fifth Amendment or its State counterpart (contained in Part First, Article 15 of the New Hampshire Constitution) is here involved. This is solely and distinctly what has come to be popularly referred to as a "First Amendment Case."

Appellant contended before the Highest Court of New Hampshire that asking him questions relating to the actual content of a lecture given by him at a State University violated the Federal First Amendment that no law may constitutionally abridge freedom of speech. In holding that the questioning did not violate the First Amendment, the New Hampshire Supreme Court quoted with approval from *Barsky* v. *United States*, 167 F. 2d 241, 247, to the effect that:

> "'There is a vast difference between the necessities for inquiry and the necessities for action. The latter may be

> only where danger is clear and present but the former is when danger is reasonably represented as potential.'" (R. 221).

It was plainly pointed out that such restrictions on Appellant's freedoms, if any, as were in issue before the Supreme Court of New Hampshire resulted from investigation and not from any legislation directly limiting those freedoms. Thus there has been no attempt in New Hampshire nor is there anything in the record of this case designed to empower or constitute a legislative committee as a censor or regulator of human conduct. This was solely a fact-finding investigation and nothing in the questioning directed toward the witness directly or indirectly enjoined any conformity upon the witness nor compelled the witness in any way, shape or manner to be a witness against himself.

In point of fact, the witness told the Legislature of New Hampshire that he was prepared to answer certain questions but beyond that he was not talking. The witness then proceeded to make a categorical denial of participation in subversion. His language on this point appears in the Record at page 70, where he said:

> "I would like to say one thing in this connection, Mr. Wyman. I stated under oath at my last appearance that, and I now repeat it, that I do not advocate or in any way further the aim of overthrowing constitutional government by force and violence. I did not so advocate in the lecture I gave at the University of New Hampshire. In fact, I have never at any time so advocated in a lecture anywhere. Aside from that I have nothing I want to say about the lecture in question. . . . on the grounds that it is totally outside the scope of this inquiry and that it is an invasion of constitutional rights of free speech guaranteed under the First Amendment."

The witness then proceeded to refuse to answer even the general question as to what was the subject of his lecture. (R. 70)

Appellant's brief seeks to convey the impression that fact-finding investigation directed to determining what the witness

actually said, in an effort to ascertain whether or not there had been any subversive activity as defined in the basic statute (RSA 588) was a hateful inquisition, invasive of academic freedom, restricting and suppressing freedom of speech and discouraging persons from attendance. At this point it is believed to be quite material to consideration of this matter to observe that the lecture involved was given to students *required* to attend it for the purpose of obtaining academic credit in the Humanities Course at the University of New Hampshire. The matter thus stands on a very different footing from a public address which citizens would be free to attend or not to attend as they saw fit. This observation should not be taken as indicating that Appellee believes that in the latter event a fact-finding investigation would be for that reason precluded, for as this Court has said in *Adler* v. *Board of Education*, 342 U. S. 485, 493:

> ". . . A teacher works in a sensitive area in a classroom. There he shapes the attitude of young minds toward the society in which they live. In this the State has a vital concern. It must preserve the integrity of the schools."

The New Hampshire Supreme Court specifically limited the Trial Court's ruling that fact-finding into the actual content of any lecture given at any school was permitted in New Hampshire as incorrect standing alone and without qualification (R. 216), holding that those lectures about which the committee may inquire are confined to those concerning which it possesses reasonable or reliable information indicating that the violent overthrow of existing government may have been advocated or taught whether knowingly or wilfully or not. The decision cautioned that the legislative precept did not authorize the committee to examine private citizens indiscriminately in the mere hope of stumbling on to information.

The record in the principal case indicates more than sufficient basis for questioning Paul M. Sweezy to determine whether he was a party to advocacy of subversion. In the Record appears a reference to more than a half dozen organizations with which the witness had been affiliated either as a member, sponsor, or

proponent, which organizations for purposes of the Federal Loyalty-Security Program had been cited by the Attorney General of the United States as Communist-infiltrated or controlled. Of course, such descriptions by federal authorities did not make the organizations "subversive" within the definition of New Hampshire Law. But they at the least afforded some indication that Communists were active within them. What did the witness know about all this? Some of these and other organizations with which the record indicates the witness to have had more than passing acquaintance, have been described in reports of the House Committee on Un-American Activities as also Communist controlled or manipulated. These reports had been widely publicized and it is most unlikely that such publication was not then well known to the witness. In addition to this, the witness himself testified that he was a Marxist (R. 82) and that he had written, with one Leo Huberman, the following statement in 1953 which he reaffirmed as expressing his continuing opinion at the second hearing in 1954. (R. 108)

> "In which country, within the last few months, did a presidential candidate promise peace and immediately upon taking office set about spreading war? . . .
>
> "And as regards the leaders of the two camps, it is certain that in the last eight years the United States has been responsible for killing a vastly greater number of human beings than has the Soviet Union.
>
> "We would not argue, however, that the quantitative question, even if it were possible to answer it with precision, is the crucial one. In the last analysis, those who hate violence must judge it by an entirely different standard—they must ask whether violence is used to perpetuate a state of affairs in which violence is inevitable, or whether it is used in the interests of creating a truly human society from which it will be possible at long last to banish violence altogether.
>
> "So far as the United States and its allies are concerned, There is unfortunately no doubt about the answer. Our

Country is preparing to practice violence on a hitherto undreamed-of scale to preserve a social order which in the space of four decades has already produced the greatest orgy of violence in the whole long and violent history of the human race. Capitalism, the organization of society according to the barbaric principle of private profit, is the scourge of mankind; and violence designed to preserve it is doubly damned, once for itself and once for its purpose.

"Those of us who have socialism in our bones, who believe that a truly human society can be erected only on the basis of common ownership and economic planning, must necessarily judge the violence of the socialist countries differently. We hate it, as we hate all violence; we would have vastly preferred to have the building of the new economy take place peacefully and painlessly, as it could have if the advanced countries had led the way. But history—which, as Friedrich Engels once said, is a most cruel goddess—decreed that the economic foundations of the society of the future must be laid in backward countries, not only without the assistance of the advanced countries but against their ruthless and implacable resistance. It was thereby rendered inevitable that the process should be difficult, painful, and violent. But the process does go forward, and that the majestic successes of the Soviet economy, despite all the strains and trials to which it has been subjected in these years of Hot and Cold Wars, is irrefutable proof, and the hopes of mankind for a better future go with it. For the first time in history we can say that violence is being used to protect regimes which are doing their utmost to create a society which will be able to dispense with violence. That makes all the difference."

Even the brief of Appellant concedes that this extract from Appellant's writings might be a justification for pursuing further with the subject matter of his lecture (Appellant's Brief p. 35). In this connection it is important to observe that the New Hampshire Supreme Court in its opinion found the questions to be

pertinent and relevant, which holding is believed to conclude the matter of relevancy, which is not open here.

"Interpretation of state legislation is primarily the function of state authorities, judicial and administrative. The construction given to a state statute by the state courts is binding upon federal courts." *Albertson* v. *Millard*, 345 U. S. 242, 97 L. Ed. 983 (1953).

Poulos v. *State*, 97 N. H. 352, 88 A. 2d 860, Affd. 345 U. S. 395, 97 L. Ed. 1105 (1952);

Winters v. *New York*, 333 U. S. 507, 92 L. Ed. 840 (1948);

Palerno v. *Lyons*, 334 U. S. 314, 92 L. Ed. 1409 (1948);

Aero Mayflower Transit Co. v. *Railroad Comm'rs.*, 332 U. S. 495, 92 L. Ed. 99 (1947);

Bob-Lo Excursion Co. v. *Michigan*, 333 U. S. 28, 92 L. Ed. 455 (1947);

Standard Oil Co. v. *Johnson*, 316 U. S. 481, 86 L. Ed. 1611 (1942);

U. S. v. *Texas*, 314 U. S. 480, 86 L. Ed. 356 (1941);

Minnesota ex rel Pearson v. *Probate Ct.*, 309 U. S. 270, 84 L. Ed. 744, (1940);

Erie v. *Tompkins*, 304 U. S. 64, 82 L. Ed. 1188 (1937).

See also: *The Leiter Minerals, Inc.* v. *United States*, (USSC A/S, Jan. 14, 1957, p. 9)

See: *Annotations*, 50 *Am. Jur.* "Statutes" s. 223
14 *Am. Jur.* "Courts" ss. 99-114
114 A.L.R. 1500

Faced with this record of Sweezy's activities and writings, it is respectfully contended that any fact-finding committee charged with seeking to determine whether or not subversive activities existed in New Hampshire would have been derelict in its duty had it not called Sweezy to testify. For such a committee to be met merely with a general denial and refusal to answer further even concerning the subject of his lecture, on contention that the

First Amendment precludes such questioning, proselytes the First Amendment to purposes for which it surely was never intended. The First Amendment does and should mean that laws under our constitutional system may not prohibit freedom of speech except in those cases where freedom of absolute expression is conscionably restricted in the public interest.

See: *Dennis* v. *United States*, 341 U. S. 494 (1951);

American Communications Assoc. v. *Dowds*, 339 U. S. 382 (1950);

United States v. *Orman*, 207 F. 2d 148 (1953);

Rumely v. *United States*, 345 U. S. 41 (1953);

United States v. *Josephson* 165 F. 2d 82 (1947); Cert. Denied, 333 U. S. 838 (1948);

Lawson v. *United States*, 85 U. S. App. D. C. 167, 176 F. 2d 49; Cert. Denied, 339 U. S. 934 (1949).

"Now, whatever may have been thought to have been the effect of the First Amendment, right of a Congressional Committee to make inquiries relating to the activities, affiliations and associations of witnesses, in the light of the Josephson case, in the Second Circuit, and the Barsky case in our own Circuit, there can be no possible question in these two jurisdictions, if indeed there can be in any other, that the First Amendment does not preclude the Committee from asking the questions here involved, nor does it justify the defendant in refusing to answer them." *United States* v. *Fitzpatrick*, 96 F. Supp. 491, 493 (1951).

If the First Amendment is to be held to prohibit the asking of an admittedly relevant question in a lawful and constitutional investigation of subversive activities, there is thereby injected a road block to essential legislative process which would certainly stifle the imperative need that lawmaking bodies should be entitled to ascertainment of full and factual background information in order to intelligently legislate.

McGrain v. *Daugherty*, 273 U. S. 135, 161 (1927);
In re Chapman, 166 U. S. 661, 670 (1897);
Townsend v. *United States*, 95 F. 2d 352, 355 (CADC 1938), Cert. Denied 303 U. S. 664;
Barenblatt v. *United States* (#13327, CADC Jan. 3, 1957);
Watkins v. *United States*, 233 F. 2d 681 (1956).

In Appellant's brief at page 38, third paragraph, in remarks seeking adoption of a rule to limit legislative cross-examination in ascertainment of facts, Appellant urges that a prosecution for perjury is an adequate device for achieving truth and assuring "the integrity of the process of legislative investigation." If such a position were to be the law it would be within the power of any witness to foreclose his further examination solely by affirmation under oath in the nature of a blanket denial of relationship to or knowledge of the subject matter under investigation. The law of perjury is itself a difficult field. Much investigation of possible subversion is unavoidably related to answers involving a subjective standard, *e. g.* "I don't remember," "I never knew," "I know of no subversion," etc. No fact-finding committee, State or Federal, could get anywhere near the facts were it to be shut off by an answer from the witness under oath that, "I am not and have never been a Communist. I know nothing of nor ever have known of any persons or organizations seeking the overthrow of the State by force and violence if necessary. Beyond that I am not talking."

A point is reached in legislative investigation as well as in judicial proceedings where no matter how polite the exchange, the matter becomes vitally adversary. It is evident that the record now before this Court reflects courteous examination and courteous answers. No known abuse of method or procedure exists here and none is claimed by Appellant. Nevertheless, Appellant's refusal to testify before the New Hampshire Superior Court has resulted in a finding of contempt of court. It was a deliberate refusal. It was an intentional denial of legislative power. It was from a witness represented by counsel, who now

seeks from this Court a decision applying the *First Amendment* in a broader manner than even the *Fifth Amendment* has yet been treated in our courts.

See: *Quinn* v. *United States* 349 U. S. 155 (1955)
Rogers v. *United States* 340 U. S. 367 (1951)

No harassment can be found in this record. The second inquiry of the witness was literally compelled by the witness' own previous activities. While it is something of a restriction that a person should be required to testify before a legislative committee, nothing in the process of asking questions in private session restrains the witness from freedom of lawful speech or writing in any known way. *U. S.* v. *Fitzpatrick*, 96 F. Supp. 491 (1951); *U. S.* v. *Bryan*, 72 F. Supp. 58 (1947); *Marshall* v. *U. S.* 176 F. 2nd 473 (1949). The lives of every citizen of a State and of the United States as well, must, subject always to the privilege against self-incrimination, remain an open book in relation to inquiry of subversion against State or Nation. Such a duty in this troubled era is a reasonable responsibility of American citizenship. Should abuses in method or procedure violate other private rights, such abuses may be corrected by appropriate judicial review. But appeals to the judiciary should be confined to claims of specific abuse and not seek aid from the judiciary in so limiting the powers of a State Legislature or of Congress as to literally make it impossible for it to do its assigned and important task under our tri-partite system of government.

III. QUESTIONS CONCERNING THE PROGESSIVE PARTY AND THE PROGRESSIVE CITIZENS OF AMERICA WERE NOT IN VIOLATION OF THE FIRST AMENDMENT.

One of the duties of the legislative committee under its precept in the principal case (L. 1953, c. 307) was to determine whether or not any subversive organizations existed in the State of New Hampshire. RSA 588 defines "subversive organization" as:

". . . any organization which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach activities intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or of any political subdivision of either of them, by force, or violence."

Closely related to the questioning of Sweezy was questioning of one Gwynne H. Daggett, a professor at the University of New Hampshire, who extended the invitation of Sweezy to give the lecture on March 22, 1954. (R. 71) Considerable of the Record and the exchanges of counsel appearing on Pages 96 - 151 were concerned directly with the refusal of Professor Daggett to testify concerning the lecture and his relationship to the Progressive Party. Eventually the Superior Court of New Hampshire found the questions relevant and ordered Daggett to answer, at which time Daggett complied, testifying in part that he was a Vice-Chairman of the Progressive Party in New Hampshire at the present time and that the party had an informal organization but was largely moribund. (T. 220, l. 40) In New Hampshire, as the Record shows, the forerunner of the Progressive Party was believed to be, based on investigation, an organization known as the Progressive Citizens of America (R. 37, 64) This organization became active in 1947 and it was in relation to the incipiency of the Progressive Citizens of America that Sweezy was questioned concerning the names of individuals working in that organization. (R. 64) It is not believed that a fact-finding committee is or should be required to first identify individuals as Communists before it can question a witness concerning them. One of the persons about whom the witness was asked in this regard was one Charles Beebe (R. 64). A portion of a previous record under oath was read to Sweezy in which the question was asked of another witness, "Is it your opinion that the Communists were active in the Progressive Party?" Answer: "Yes, it was." (R. 98) Sweezy was then asked pointedly whether Com-

munists were active in the Progressive Citizens of America and refused to answer. (R. 98) At one point the committee asked, "If I told you that I had sworn testimony by Mr. Charles Beebe that he was then [in 1947] a member of the Communist Party, would that surprise you?" To which the witness' reply was, "Surprise me? I don't know. Are you telling me that you have?" (R. 65, 66) In the combined transcripts appeared reference to a letterhead of the Progressive Party in New Hampshire containing the names of not less than five individuals identified by sworn testimony in the same State investigation as present or former members of the Communist Party. (See Transcript, p. 189, l. 25 and p. 191, l. 25).

It would be impossible for the committee to ascertain the extent and influence of Communists in the Progressive Citizens of America and later in the Progressive Party itself or ultimately whether either of these organizations in New Hampshire were "subversive organizations" within the definition of RSA 588 unless witnesses are required to testify concerning the activity of named persons in these organizations. Nothing in the questions required Sweezy to himself characterize persons as Communists. The witness testified repeatedly that he did not know persons as Communists and did not inquire into their "political" affiliations. In disposing of this point the New Hampshire Supreme Court specifically found that the Committee was entitled to inquire and that it—

> ". . . did possess information which was sufficient to reasonably warrant inquiry concerning the Progressive Party . . . evident from his statement made during the hearings held before him that 'considerable sworn testimony has been given in this investigation to the effect that the Progressive Party in New Hampshire has been heavily infiltrated by members of the Communist Party and that the policies and purposes of the Progressive Party have been directly influenced by members of the Communist Party'. See: *Oklahoma Press Publishing Co.* v. *Walling*, 327 U. S. 186, 209" (R. 218).

The New Hampshire Supreme Court emphasized in the Sweezy decision that such questioning is necessarily relevant, saying:

> "The policies of an organization are established by its members, or sometimes by a small minority of its members. Information as to policies may be obtained in some instances from those members who have participated in the making of them. On the other hand, if subversive purposes actually exist, the witness may not fully disclose his knowledge concerning them and other methods must be used to determine their existence. *The extent to which members of the Communist Party are incuded in the membership of an organization and are active in controlling its policies is clearly related to the question of whether the organization is subversive.* A person who has been active in an organization, as was the defendant in the Progressive Party, is a natural source from which the committee may acquire information concerning the purposes of the organization or the identity of those members who established them.
>
> "It is on information of this sort that a determination concerning the nature of an organization may be made by a legislative investigating committee. Whether the persons referred to in the questions were or were not in fact Communist Party members or subversive persons is not decisive of the issue of relevancy and the defendant was not entitled to proof of that fact before being required to answer. The questions called for answers concerning the membership or participation of named persons in the Progressive Party which, if given, would aid the Attorney General in determining whether that party and its predecessor are or were subversive organizations. They were accordingly relevant to the subject matter of the investigation." (R. 218, 219). (Emphasis Supplied)

United States v. *Petrillo*, 332 U. S. 1 (1947);

Dunne v. *United States*, 138 F. 2d 137, Cert. Denied 320 U. S. 790, 88 L. Ed. 476 (1943);

Lawson v. *United States*, 176 F. 2d 49. Cert. Denied 339 U. S. 934 (1949)

IV. THE CONSTRUCTION PLACED ON THE NEW HAMPSHIRE STATUTES BY THE NEW HAMPSHIRE SUPREME COURT DOES NOT DENY DUE PROCESS OF LAW.

Appellee is completely at a loss to understand—other than for physchological reasons—why Appellant continues to seek to confuse standards of "guilt" with investigation of fact. At page 55 of his brief, Appellant refers to the difficulty of ascertaining "where this new standard of guilt would draw the line between the allowable and forbidden . . ." Appellant seeks to liken his position as a witness before the investigating committee to that of a defendant on trial in a court of law. While he recognizes that no criminal prosecution is involved, again and again he speaks of the "sanctions of the investigatory process" (Brief, page 55), and attempts to imply that in some manner something that is his right has been taken away from him through having been questioned by the committee. On the record in this case it is entirely apparent that no sanctions have been directed to Appellant whatever. Because of Appellant's refusal to answer questions it was necessary under New Hampshire Law (RSA 491: 19, 20) to file a petition with the Superior Court to have the matter continued in court. The transfer to the court was certainly a situation of Appellant's own creation and once in court he was then subject to the judicial power and to the protection of the judicial process. Appellant was convicted of contempt of court, not contempt of a legislative committee. Appellant was never found to be in contempt of a legislative committee. (R. 208)

At no time did the committee seek to tell the witness what to say or what not to say. At no time did the committee release to the press the transcript of Sweezy's testimony. In the course of the judicial proceedings and in fact at the request of Sweezy's counsel as well as by direction of the court, the transcripts of the January and June hearings became a part of the court record and hence a public document.

That portion of the opinion of the New Hampshire Supreme Court relative to legislative definition of members of subversive organizations as subversive persons although not "knowingly or wilfully" attaches no criminal sanctions to the classification. (R. 218). See *Nelson* v. *Wyman* 99 N. H. 33, (1954). Appellant's attempt to invoke *Wieman* v. *Updegraff*, 344 U. S. 183, is inapt. The Wieman case involved a loyalty oath to which criminal sanctions applied even though the statute did not require scienter for criminality. For purposes of fact-finding investigation, the New Hampshire Legislature directed its committee not only to ascertain whether there were subversive organizations in the state within the meaning of the statute, but *a fortiori* the nature and extent of the membership therein. Clearly, membership in an organization actually subversive in the precise formula established by RSA 588 might include individuals who did not know of the real purposes of the organization. Such membership is required to be investigated but no criminal sanction applies to innocent membership. It is not made a crime in New Hampshire to be a member of even a subversive organization unless the membership is knowing and wilful. (RSA 588). The Supreme Court of New Hampshire has not said more than this. The law involved in the principal case did not render innocent membership subject to criminal penalties. As was explicitly stated in *Nelson* v. *Wyman*, 99 N. H. 33, 48 (1954) ". ... Those who lack that knowledge do not violate the statute by their membership". Under the Oklahoma statute involved in the *Wieman* case, membership of an innocent character in an organization later found to be subversive might have rendered an affiant subject to criminal penalties. Nothing of this type is very remotely involved in the principal case. There is and has been no "indiscriminate classification of innocent with knowing activity" by the New Hampshire law as construed by the New Hampshire Supreme Court in the principal case.

> "The statute does not penalize members unless it appears beyond a reasonable doubt that they became or remained such knowing said organization to be a subversive organiza-

tion. If they have that knowledge, which must be knowledge of its unlawful activity or purpose (see *Bridges* v. *Wixon*, 326 U. S. 135; *De Jonge* v. *Oregon*, 229 U. S. 353), they are adding their weight to the accomplishment of the forbidden purpose or activity whether actually approved by them or not. *Dunne* v. *United States*, 138 F. (2d) 137, 143, cert. den., 320 U. S. 790. An organization may be found to be subversive only if the evidence indicates beyond a reasonable doubt that its activities or purposes are those which are plainly defined in the statute. Persons who may be subject to the statute are clearly informed that if they join or continue membership in an organization which engages in those definitely described activities or which has those purposes that classify it as subversive, knowing that such are its activities or purposes, they are liable to its penalties. *Whitney* v. *California*, 274 U. S. 357, 368. The fact that the knowledge on the part of the accused which is an essential element of the crime is concerned with the thought processes of the accused and is not capable of direct proof by objective evidence does not invalidate the statute. The existence of a *mens rea* is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence. *Dennis* v. *United States*, 341 U. S. 494, 500." *Nelson* v. *Wyman*, 99 N. H. 33, 47 (1954).

Sweezy testified that he considered himself a Marxist. While Appellee is decidedly not an expert in the field of Marxism, there is considerable writing on this subject in relation to Communism and in direct relation to subversive activity as defined in the New Hampshire statute. The basis of Communist theory was laid down by Marx and Engels in the *Manifesto* in 1848. Certain types of Marxism clearly embrace advocacy of the overthrow of the capitalist system by force and violence if necessary. For a carefuly study of this subject, see the development of Marxist theory as contained in Hunt, "The Theory and Practice of Communism" (New Ed. New York, the MacMillan Co., 1952). As has been stated by this author at page 70:

> "... Marx's followers early became divided into two schools, each of which could appeal to his authority—the moderates, who believed in peaceful revolution, which came, in fact, to imply the possibility of reforming the existing order, and the extremists, who argued with perhaps a greater show of reason, that violence would be necessary, since capitalists were wicked animals who would defend themselves if attacked. But present-day Marxists, following Lenin, vehemently deny that Marx ever modified the position he took up in the *Communist Manifesto*, and assert that the fact such an opinion gained credence towards the end of the last century was due to the "opportunism" of the Social Democrats."

When a legislative committee is charged with a responsibility of finding out whether individuals in a State seek to subvert youth in a State-supported institution at a lecture at which attendance is required, testimony of an individual that he considers himself a Marxist raises a whole galaxy of necessary relevant questioning. None of this questioning, in the language of Mr. Justice Black in his concurring opinion in *Wieman* v. *Updegraff* 344 U. S. 183 (1952) stigmatizes or penalizes thought or speech of the mere unorthodox nor ensnares or silences full and free lawful expression of ideas. Who brought this Marxist to the State University? What kind of Marxist was he? What did he use and say to the students who were required to listen to him? Were there organizations within the State reported to be Communist-controlled included within the membership or acquaintance of this person? If so, were such organizations subversive as defined by the State law? Did they propose the overthrow or alteration of our constitutional form of government by force and violence if necessary? Was there advocacy of subversion or was the lecture merely objective, explanatory, teaching? If there was no subversion, why does the witness decline to answer courteous questioning of a legislative committee in executive session? Is the position of the witness tantamount to contention that the classroom is something supra State? In this day and

time and with the background of world affairs what it is, is not investigation of the activities of an admitted Marxist relevant and in fact obligatory upon a committee charged with the duty to report whether there has been subversion in a State?

Even the most extreme advocates of academic freedom do not contend that a legislative committee is powerless to ask pertinent questions about what goes on in the classroom.

> "That Congress and State Legislatures have broad and extensive powers of investigation is no longer open to serious doubt. While it was questioned at one time whether Congress could act as the grand inquest of the nation (*Kilbourn* v. *Thompson*, 103 U. S. 168) *that view is not now law.*" *Opinion of the Justices*, 96 N. H. 530 (1950). Emphasis supplied).
>
> See also: *Marcello* v. *United States*, 196 F. 2d 437 (1952); *United States* v. *DiCarlo*, 102 F. Supp. 597 (1952).
>
> "It is not always easy to distinguish teaching or advocacy in the sense of incitement from teaching or advocacy in the sense of exposition or explanation. *Dennis* v. *United States*, 341 U. S. 494, 572. The distinction is one of fact. The defendant's denial that he advocated, taught or in any way furthered the aim of overthrowing constitutional government by force or violence in his lecture is simply his determination of that fact, which the committee could believe or not as it saw fit. The witness could not by his answer impose upon the investigating committee the burden of producing evidence that a doctrine aimed at the violent overthrow of existing government was in fact advocated by him before it could inquire of him concerning the lecture." *Wyman* v. *Sweezy*, 100 N. H. 103, 108, 121 A. 2d 783 (dec'd Mar. 6, 1956).

V. THE POWER OF A FACT-FINDING COMMITTEE OF A STATE LEGISLATURE TO INQUIRE INTO THE ACTUAL CONDUCT OF A REQUIRED ATTENDANCE LECTURE AT A STATE-SUPPORTED INSTITUTION FOR THE SOLE PURPOSE OF DETERMINING WHETHER THE LECTURE INCLUDED ADVOCACY OF SUBVERSIVE DOCTRINE AS DISTINCT FROM OBJECTIVE EXPLANATION IS A BASIC SECURITY RIGHT WELL WITHIN THE POWER OF A STATE.

Such questioning cannot possibly either terrorize intelligent yet independent professors nor enjoin conformity on the classroom. The need for explanation becomes aggravated with such writings as those reaffirmed by Sweezy (R. 108), where in substance it was written that a President of the United States immediately upon taking office set about spreading war; that the United States in the last eight years has been responsible for killing a vastly greater number of human beings than the Soviet Union; that violence to perpetuate capitalism is doubly damned whereas violence used in the interests of creating a truly human society stands on a different footing; that the majestic successes of the Soviet economy are proof of its advance against implacable resistance of the advanced countries (meaning the United States) with the hopes of mankind having a better future going with it, and concluding that "For the first time in history we can say that violence is being used to protect regimes which are doing their utmost to create a society which will be able to dispose with violence. That makes all the difference." (R. 83).

Was this kind of violence by indirection advocated to the students at our State University? The witness may explain but he may not refuse to answer. Nothing in the mere asking of the questions operates as a police state nor as an unwarranted constitutional invasion of the witness' right of privacy. Those who contend that there is a modern day reign of terror amongst free men fed by unwarranted conclusions of guilt by association, overlook entirely the fundamental social—and for that matter,

factual—inference that the company a man keeps is relevant to his personal equation and to the meaning of his activities.

See: Shipley, *Guilt by Association*, D. C. Bar Journal of January 1954, page 16.

An isolated, well-intentioned, bona-fide mistaken membership in a single subversive or communist-controlled organization in support of one or more of the purposes of the organization which may be entirely legal and laudable is probably colorless on issue of subversive activity and may readily be explained. However, when a person's associations with cited subversive organizations over the years have been extensive, repeated, continuing, and vociferously active, then the record of the associations warrants a different view of the meaning of these extensive associations. Perhaps the individual is just one of the radical dissenters who joins and works with these organizations because he or she finds it difficult to accept a view from any Attorney General or any legislature. Or perhaps out of a spirit of genuine concern the individual has been active with such organizations trying to divert them away from Communist influence, or perhaps the individual is just too smart to be or have become a member of the Communist Party but his sympathies lie with Communism and he works with these groups who keep the door open to Communism and the Communists but does not actually patently advocate Communism as such. Whichever of these or other conclusions may be drawn, it is up to the witness to explain his conduct because whether the witness likes it or not, such conduct—repeated over the years—*is* equivocal on issues of loyalty to state and nation. Freedom of the inquiring mind to examine fact and theory in perspective is not license to advocate subversive doctrine, nor do any decisions of State or Federal Court so hold, nor is the college campus even in America a privileged sanctuary in which Communists and fellow travelers may propagandize American youth by advocacy of subversive doctrine either in the classroom or off the campus proper. *Adler* v. *Board of Education*, 342 U. S. 485 (1952).

VI. NEITHER NEW HAMPSHIRE LAW, MANNER OF INVESTIGATION, THE QUESTIONS ASKED, NOR THE STATUTE AS CONSTRUED BY THE NEW HAMPSHIRE SUPREME COURT IN THE PRINCIPAL CASE, VIOLATES ANY CONSTITUTIONAL RIGHT OF PAUL M. SWEEZY.

Appellant urges a novel proposition; the nub of which is that this Court should sanction the use of the *First Amendment* as a limitation on investigating authority beyond the requirements of relevancy. None of the cases cited by Appellant in support of these contentions is actually authority for this extreme position. Appellant repeatedly relies on dissenting opinions, particularly by Edgerton, J. in *Barsky* v. *United States*, 167 F. 2d 241 (CADC); Clark, J. in *United States* v. *Josephson*, 165 F. 2d 82 (CA 2nd); and treatises and other tertiary authority derived in part from extreme segment of the teaching profession which is extraordinarily hypochondriacal on the subject of investigation. These citations appear at length at pages 29 and 30 of Appellant's brief, typified by the quotation from Professor MacIver to the effect that legislative committee investigations "have been largely responsible for the spirit of apprehension and the sense of intimidation that, according to considerable agreement of testimony has invaded the halls of learning," MacIver, "*Academic Freedom in Our Time*" (1955), page 49. In addition, Appellant cites as authorities to this Court several publications notorious for their prejudice against investigation, and subsidized by the Fund for the Republic, Inc. Among these are Allan Barth's "*Government by Inquisition*" (1955), and Telford Taylor's "*Grand Inquest*" (1955). (R. 29).

If an investigation is properly conducted, if it operates under Rules of Procedure similar to those adopted in New Hampshire (Appendix E), as recommended by the House of Delegates of the American Bar Association, and as designed to protect the rights of witnesses to the maximum extent consonant with not destroying reasonable fact-finding power; there is no foundation for the claims of hysteria, intimidation, harassment, fear, and

conformity which are quite literally and intentionally presented as a smokescreen designed to make the whole problems of investigation seem to smell to High Heaven. Legislative and congressional investigation is subject to rules of restraint, to requirements of fair method, and to protection of rights of witnesses by many judicial decisions.

U. S. v. *Orman*, 207 F. 2nd 148 (1953).
Barsky v. *U. S.*, 167 F. 2nd 241 (1947);
Matter of Barnes, 204 N. Y. 108 (1911);

The fact-finding power should not be destroyed by any such extreme application of the *First Amendment* as that contended for by Appellant. Nothing that has happened in New Hampshire deprives Appellant of his right to express his lawful views in accordance with democratic procedures nor his hearers of the right to listen. Sweezy has publicly spoken subsequently at divers public places in this State. Lawful free speech has not been shut off in New Hampshire in any way whatever. The web and path of the Communist line in relation to ascertainment of the truth or falsity of denials of subversive activity is a legitimate and necessary part of fact-finding cross-examination. The range of questioning is always subject to the requirement of relevancy.

U. S. Orman, 207 F. 2nd 148 (1953);
U. S. v. *Josephson*, 165 F. 2nd 82 (1947);
Rumely v. *U. S.*, 345 U. S. 41 (1953);
Barenblatt v. *U. S.*, (CCADC Jan. 3, 1957);
McGrain v. *Daugherty*, 273 U. S. 135 (1927);
In re Chapman, 166 U. S. 661 (1897);

See: 33 B. U. Law Review 337 (1953) Liacos, "Rights of Witnesses Before Congressional Committees."

That requirement is always open to judicial review as was done in the principal case. *Wyman* v. *Sweezy*, 100 N. H. 103, 121 A. 2d. 783 (1956).

Again and again, Appellant's argument begs the ultimate question before the legislative committee. Whether discussion

of public issues by methods of peaceful persuasion as distinct from advocacy was in fact involved in the lecture on March 22, 1954 is still unknown. The witness has still refused to testify even concerning the subject of his lecture. Reference to *Dejonge v. Oregon* 299 U. S. 353 at page 48 of Appellant's brief, accompanied by the statement, that laws may not restrict advocacy of ". . . particular points of view or work for particular economic, social or political change *by peaceful and legitimate methods*", again begs the question under investigation, which is whether the advocacy was or was not within the zone of lawful free speech. The statement that appears in Appellant's brief at Page 48 categorically affirming to this Court that "Appellant answered all questions with regard to his activities in these organizations and his knowledge of their activities, so far as the use or advocacy of force and violence was concerned. Appellant also answered all questions concerning the presence of Communist Party members in the two organizations and concerning Communist Party influence or manipulation of any kind . . ." is simply untrue, as careful examination of the Record will indicate. The position of the Committee in this regard was fully outlined to the Superior Court before its ruling was made (R. 120, 124, 129, 132, 133, 135).

In no way does the questioning of the witness seek to punish merely unorthodox *political* opinion, activity or association. The ultimate question which is *still* under investigation and information concerning which the New Hampshire Legislature is entitled to answers, is whether the Appellant's activities were confined to the field of free speech or whether they constituted subversion within the definition of the law. Such information the witness declines to give beyond a general denial. Nothing in the Constitution, nothing in the rules of fair play, nothing in our system of government itself requires or justifies extension of the First Amendment to deny relevant questioning by legislative committees engaged in fact-finding in aid of legislation.

CONCLUSION

Nothing in the record of this case—to borrow Appellant's phraseology—either blocks any lawful public discussion or lawful political organization. Fact-finding investigation is an indispensable foundation of sound legislation. Asking relevant questions under a constitutional resolution preserving at all times the right of any witness to invoke his personal privilege against self-incrimination in no sense suppresses lawful expression of ideas no matter how challenging.

A wide field of possible legislation remains available to State Legislatures in relation to subversive activities involving solely the State government. Based on recommendations of the investigating committee, the New Hampshire Legislature may desire to amend the 1951 Act (RSA 588) to qualify definitions or in regard to other detail; enact laws concerning registration of summer camp guests; change the method of granting immunity and revise the loyalty oath and affidavit.

The interest of State Governments in investigation and protection against subversion directed against the State is undeniable. Even after the decision of this Court in *Pennsylvania* v. *Nelson*, 350 U. S. 497, the States may legislate with respect to subversion involving the Federal Government although the enforceability of such State laws would remain suspended as long as the Smith Act continues as Federal statutory law.

It is earnestly and respectfully submitted that the decision of the New Hampshire Supreme Court should be affirmed.

Respectfully submitted,

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APPENDIX A

Laws of 1951, Chapter 193

AN ACT RELATIVE TO SUBVERSIVE ACTIVITIES.

WHEREAS, there is a World Communist movement under the domination of a foreign power, having as its objective the establishment of totalitarian dictatorship in all parts of the world under its control; and

WHEREAS, such dictatorship is characterized by the liquidation of all political parties other than the Communist Party, the abolishment of free speech, free assembly, and freedom of religion, and is the complete antithesis of the American constitutional form of government; and

WHEREAS, the methods used by such a police state include treachery, deceit, infiltration into governmental and other institutions, espionage, sabotage, terrorism and other unlawful means; and

WHEREAS, the World Communist movement is not a political movement, but is a world-wide conspiracy having sections in each country; and

WHEREAS, using the methods above set forth, it has already successfully conquered in recent years a large part of the world and has established spearheads in this country in the form of various conspiratorial organizations, some masquerading under the pretense of being political parties, others infiltrating organizations which they seek to control in order to futher the objectives of the World Communist movement; and

WHEREAS, the subversive groups have had similar objectives and it is essential to the preservation of the state, as well as for the protection of citizens from unfounded accusations, that criminal acts of a seditious nature be clearly and expressly defined; and

WHEREAS, the methods adopted by subversive persons and organizations render it imperative that the loyalty of persons

entering the public employment of the state of New Hampshire or any of its political subdivisions be definitely established not only for protection of governmental processes but in order to shield employees from unfounded accusations of disloyalty; therefore

Be it enacted by the Senate and House of Representatives in General Court convened:

1. *Subversive Activities.* Amend the Revised Laws by adding after chapter 457 the following new chapter:

APPENDIX B

Chapter 457-A

Subversive Activities

1. Definitions. For the purpose of this chapter "organization" means an organization, corporation, company, partnership, association, trust, foundation, fund, club, society, committee, association, political party, or any group of persons, whether or not incorporated, permanently or temporarily associated together for joint action or advancement of views on any subject or subjects.

"Subversive organization" means any organization which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach activities intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or of any political subdivision of either of them, by force, or violence.

"Foreign subversive organization" means any organization directed, dominated or controlled directly or indirectly by a foreign government which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or to advocate, abet, advise, or teach, activities intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of the constitutional form of government of the United States,

or of the state of New Hampshire, or of any political subdivision of either of them, and to establish in place thereof any form of government the direction and control of which is to be vested in, or exercised by or under, the domination or control of any foreign government, organization, or individual; but does not and shall not be construed to mean an organization the *bona fide* purpose of which is to promote world peace by alliances or unions with other governments or world federations, unions or governments to be effected through constitutional means.

"Foreign government" means the government of any country or nation other than the government of the United States of America or of one of the states thereof.

"Subversive person" means any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches, by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force, or violence; or who is a member of a subversive organization or a foreign subversive organization.

SEDITION

2. Felonies. It shall be a felony for any person knowingly and willfully to

(a) commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force or violence; or

(b) advocate, abet, advise, or teach by any means any person to commit, attempt to commit, or assist in the commission of any such act under such circumstances as to constitute a clear and present danger to the security of the United States, or of the

state of New Hampshire or of any political subdivision of either of them; or

(c) conspire with one or more persons to commit any such act; or

(d) assist in the formation or participate in the management or to contribute to the support of any subversive organization or foreign subversive organization knowing said organization to be a subversive organization or a foreign subversive organization; or

(e) destroy any books, records or files, or secrete any funds in this state of a subversive organization or a foreign subversive organization, knowing said organization to be such.

Any person who shall be convicted by a court of competent jurisdiction of violating any of the provisions of this section shall be fined not more than twenty thousand dollars, or imprisoned for not more than twenty years, or both, at the discretion of the court.

3. Penalty. It shall be a felony for any person after August 1, 1951 to become, or after November 1, 1951 to remain a member of a subversive organization or a foreign subversive organization knowing said organization to be a subversive organization or foreign subversive organization. Any person who shall be convicted by a court of competent jurisdiction of violating this section shall be fined not more than five thousand dollars, or imprisoned for not more than five years, or both, at the discretion of the court.

4. Barred from Office. Any person who shall be convicted by a court of competent jurisdiction of violating any of the provisions of sections 2 and 3 of this chapter, in addition to all other penalties therein provided, shall from the date of such conviction be barred from

(a) holding any office, elective or appointive, or any other position of profit or trust in or employment by the government

of the state of New Hampshire or any agency thereof or of any county, municipal corporation or other political subdivision of said state;

(b) filing or standing for election to any public office in the state of New Hampshire.

5. Dissolution of Organizations. It shall be unlawful for any subversive organization or foreign subversive organization to exist or function in the state of New Hampshire and any organization which by a court of competent jurisdiction is found to have violated the provisions of this section shall be dissolved, and if it be a corporation organized and existing under the laws of the state of New Hampshire, a finding by a court of competent jurisdiction that it has violated the provisions of this section shall constitute legal cause for forfeiture of its charter and its charter shall be forfeited, and all funds, books, records and files of every kind and all other property of any organization found to have violated the provisions of this section shall be seized by and for the state of New Hampshire, the funds to be deposited in the state treasury and the books, records, files and other property to be turned over to the attorney general of New Hampshire.

6. Assistance Furnished. For the collection of any evidence and information referred to in this chapter, the attorney general is hereby directed to call upon the superintendent of state police, and county and municipal police authorities of the state to furnish him such assistance as may from time to time be required. Such police authorities are directed to furnish information and assistance as may be from time to time so requested. The attorney general may testify before any grand jury as to matters referred to in this chapter as to which he may have information.

7. Records. The attorney general shall maintain complete records of all information received by him and all matters handled by him under the requirements of this chapter. Such records as may reflect on the loyalty of any resident of this state shall not

be made public nor divulged to any person except with the permissions of the attorney general to effectuate the purposes hereof.

8. Grand Jury Inquiries. The superior court, when in its discretion it appears appropriate, or when informed by the county solicitor that there is information or evidence of the character described in section 2 of this chapter to be considered by the grand jury, shall charge the grand jury to inquire into violations of this chapter for the purpose of proper action, and further to inquire generally into the purposes, processes and activities and any other matters affecting communism or any related or other subversive organizations, associations, groups or persons.

LOYALTY

9. Employment. No subversive person, as defined in this chapter, shall be eligible for employment in, or appointment to any office, or any position of trust or profit in the government of, or in the administration of the business of this state, or of any county, municipality, or other political subdivision of this state.

10. Written Statements Required. Every person and every board, commission, council, department, court or other agency of the state of New Hampshire or any political subdivision thereof, who or which appoints or employs or supervises in any manner the appointment or employment of public officials or employees shall establish by rules, regulations or otherwise, procedures designed to ascertain before any person, including teachers and other employees of any public educational institution in this state, is appointed or employed, that he or she as the case may be, is not a subversive person, and that there are no reasonable grounds to believe such persons are subversive persons. In the event such reasonable grounds exist, he or she as the case may be, shall not be appointed or employed. In securing any facts necessary to ascertain the information herein required, the applicant shall be required to sign a written statement containing answers to such inquiries as may be material, which statement shall contain notice that it is subject to the penalties of perjury.

11. Exceptions. The inquiries prescribed in section 10 other than the written statement to be executed by an applicant for employment, shall not be required as a prerequisite to the employment of any persons in the classification of laborers in any case in which the employing authority shall in his or its discretion determine, and by rule and regulation specify the reasons why, the nature of the work to be performed is such that employment of persons as to whom there may be reasonable grounds to believe that they are subversive persons as defined in this chapter will not be dangerous to the health of the citizens or the security of the government of the United States, the state of New Hampshire or any political subdivision thereof.

12. Present Employees. Every person, who on August 1, 1951 shall be in the employ of the state of New Hampshire or of any political subdivision thereof, other than those now holding elective office shall be required on or before October 1, 1951 to make a written statement which shall contain notice that it is subject to the penalties of perjury, that he or she is not a subversive person as defined in this chapter, namely, any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force, or violence; or who is a member of a subversive organization or a foreign subversive organization, as more fully defined in this chapter such statement shall be prepared and execution required by every person and every board, commission, council, department, court, or other agency of the state of New Hampshire or any political subdivision thereof responsible for the supervision of employees under its jurisdiction. Any such person failing or refusing to execute such a statement or who admits he is a subversive person as defined in this chapter shall immediately be discharged.

13. Discharge of Personnel; Hearing. Reasonable grounds on all the evidence to believe that any person is a subversive person, as defined in this chapter shall be cause for discharge from any appointive office or other position of profit or trust in the government of or in the administration of the business of this state, or of any county, municipality or other political subdivision of this state, or any agency thereof. The personnel commission shall, by appropriate rules or regulations, prescribe that persons charged with being subversive persons, as defined in this chapter, shall be accorded notice and opportunity to be heard, in accordance with the procedures prescribed by law for discharges for other reasons. Every person and every board, commission, council, department, or other agency of the state of New Hampshire or any political subdivision thereof having responsibility for the appointment, employment or supervision of public employees not covered by the state classified service shall establish rules or procedures similar to those required herein for classified services for a hearing for any person charged with being a subversive person, as defined in this chapter after notice and opportunity to be heard. Every employing authority discharging any person pursuant to any provision of this chapter shall promptly report to the attorney general the fact of and the circumstances surrounding such discharge. A person discharged under the provisions of this section shall have the right within thirty days thereafter to appeal to the superior court of the county where such person may reside for a determination by such court (with the aid of a jury if the appellant so elects) as to whether or not the discharge appealed from was justified under the provisions of this act. The court shall speedily hear and determine such appeals, and from the judgment of the court, there shall be a further appeal to the supreme court of New Hampshire as in civil cases.

14. Declarations of Candidates. No person shall become a candidate for election to, nor qualify for, any public office under the election laws of this state unless he or she shall file with the declaration of candidacy, or prior to qualifying, an affidavit that

he or she is not a subversive person as defined in this chapter. No declaration of candidacy shall be received for filing by any town or city clerk or by the secretary of state unless accompanied by the affidavit aforesaid and there shall not be entered upon any ballot or voting machine at any election the name of the person who has failed or refused to make the affidavit aforesaid. 1953, c. 180, s. 1.

15. False Statements. Every written statement made pursuant to this chapter by an applicant for appointment or employment, or by any employee shall be deemed to have been made under oath if it contains a declaration preceding the signature of the maker to the effect that it is made under the penalties of perjury. Any person who makes a material misstatement of fact (a) in any such written statement, or (b) in any affidavit made pursuant to the provisions of this chapter, or (c) under oath in any hearing conducted by any agency of the state, or of any of its political subdivisions, pursuant to this chapter, or (d) in any written statement by an applicant for appointment or employment or by an employee in any state aid institution of learning in this state, intended to determine whether or not such applicant or employee is a subversive person as defined in this chapter, which statement contains notice that it is subject to the penalties of perjury shall be subject to the penalties of perjury prescribed in chapter 457 of the Revised Laws.

16. Separability. If any provision, phrase, or clause of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions, phrases, or clauses or applications of this chapter which can be given effect without the invalid provision, phrase, or clause or application and to this end the provisions, phrases and clauses of this chapter are declared to be severable.

17. Title. This chapter may be cited as the Subversive Activities Act of 1951.

[Approved August 1, 1951.]

APPENDIX C

Laws of 1953, chapter 307

Joint Resolution Relating to the Investigation of Subversive Activities.

Resolved by the Senate and House of Representatives in General Court convened:

That the attorney general is hereby authorized and directed to make full and complete investigation with respect to violations of the subversive activities act of 1951 and to determine whether subversive persons as defined in said act are presently located within this state. The attorney general is authorized to act upon his own motion and upon such information as in his judgment may be reasonable or reliable. He may authorize any member of his staff to conduct on his behalf any part of the investigation herein provided for and in such event and for such purposes any member so authorized shall have all of the powers herein granted to the attorney general.

For the purposes of this resolution, the attorney general or any duly authorized member of his staff is authorized to sit and act at such times and places during this session of the 1953 legislature, recess and adjourned periods, and to employ such attorneys, experts, clerical and other assistance as may be required, to require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, and documents, and to administer such oaths, to take such testimony and to make such expenditures within the limitations authorized herein as he deems advisable. The provisions of section 7 of chapter 193 of the Laws of 1951 shall be inapplicable to the investigation provided for herein, and the attorney general is hereby authorized to make public such information received by him, testimony given before him, and matters handled by him as he deems fit to effectuate the purposes of this resolution.

The attorney general is directed to proceed with criminal prosecutions under the subversive activities act whenever evidence presented to him in the course of the investigation indicates

violations thereof, and he shall report to the 1955 session on the first day of its regular session the results of this investigation, together with his recommendations, if any, for necessary legislation. There is hereby appropriated for the expenses of this investigation the sum of ten thousand dollars which shall include the cost of printing such report as is provided for by this resolution and shall be expended under the direction of the attorney general, but nothing herein contained shall limit the power of the attorney general to act in cases of reasonable necessity under the provisions of section 11 of chapter 24 of the Revised Laws. The governor is hereby authorized to draw his warrants for the sum hereby appropriated out of any money in the treasury not otherwise appropriated.

[Approved June 17, 1953.]

APPENDIX D

Laws of 1955, Chapter 197

AN ACT RELATIVE TO INVESTIGATION OF SUBVERSIVE ACTIVITIES.

Be it enacted by the Senate and House of Representatives in General Court convened:

1. Subversive Investigation. The investigation of subversive activities by the attorney general provided for by chapter 307 of the Laws of 1953, as continued by a resolution approved January 13, 1955, is hereby continued in full force and effect, in form, manner and authority as therein provided for the further period until June 30, 1957. The attorney general shall report to the general court of 1957 the results of this futher investigation together with his recommendations, if any, for necessary legislation. He may at any time during said period temporarily or permanently conclude his investigation hereunder if, in his opinion, no useful public purpose would be served by continuation of the investigation. There is hereby appropriated for the expenses of this continued investigation a sum not to exceed forty-two thousand five hundred dollars, which shall include the cost of printing such report as is provided for hereby, but nothing

herein contained shall limit the power of the attorney general to act in cases of reasonable necessity under the provisions of section 11 of chapter 24 of the Revised Laws (section 12, chapter 7, RSA). The governor is hereby authorized to draw his warrants for the sum hereby appropriated out of any money in the treasury not otherwise appropriated.

2. Takes Effect. This act shall take effect upon its passage.

[Approved June 14, 1955.]

APPENDIX E

Note: The following rules of procedure were adopted by the Attorney General and are applicable to the testimony given by Sweezy at both hearings.

RULES OF PROCEDURE

Investigation of Subversive Activities

Laws of 1953, chapter 307
New Hampshire

JULY 1, 1953*

Explanatory Note

Laws of 1953, chapter 307, providing for the investigation of subversive persons and activities within New Hampshire, authorizes the conduct of hearings at which testimony under oath may be required from anyone in New Hampshire. Conceivably this testimony may raise constitutional questions and other legal problems affecting the rights of witnesses, and to eliminate confusion as to the extent and nature of these rights, to clarify the manner of conduct of hearings under chapter 307, the following RULES OF PROCEDURE are published in advance of hearings. It should be recognized that these RULES OF PROCEDURE are subject to modification at any time.

* as amended May 5, 1954.

RULES

1. *Executive Session.*

Witnesses in all cases will be first advised of the contents of Laws of 1953, chapter 307, and of their constitutional privilege against self-incrimination. Insofar as is possible, examination of witnesses will be conducted in executive session. Hearings will not be held in public unless requested by the witness. Transcripts of testimony taken in executive session will be made public only when in the opinion of the Attorney General, in each individual case, such publicity is required to effectuate the purposes of Laws 1953, chapter 307.

2. *Right to Counsel.*

At either executive or public hearings, every witness may have counsel of his own choosing, if desired. Whenever questioned under oath by the Attorney General or any duly authorized member of his staff, a witness shall, prior thereto, be informed of this privilege of counsel. Attorneys not members of the bar of the State of New Hampshire will not be recognized as counsel unless they are associated with a member of the bar of this state in good standing and this associate member of the bar of the State of New Hampshire in good standing shall be present at all times during any hearing, either executive or public, at which a witness requests to be represented by counsel.

3. *Participation of Counsel.*

On behalf of a witness to whom he is counsel, an attorney shall have the right to participate in hearings as follows:

(a) to advise the witness of his legal rights;

(b) to make legal objection to questions and procedures and to submit brief statements in support of such objections, which may be either oral or in the form of memoranda, in which latter event such memoranda may be later filed for record;

(c) although witnesses are not parties and are not entitled of legal right to cross-examine other witnesses, counsel may submit to the Attorney General or to such other authorized member of his staff conducting the hearing, written questions directed to witnesses testifying as to relevant facts substantially derogatory to the reputation and character of his client;

NOTE: This confers no right upon counsel to be present at an executive session (private hearing) when his own client is not testifying, but is confined to public hearings at which testimony is given by others derogatory to his own client; it further confers no absolute right that the questions so written shall be presented if determined by the Attorney General to be irrelevant, scurrilous, insulting or impertinent.

(d) to submit as part of the record a written statement of his client, explaining or refuting testimony relating to his client, provided such statement is relevant and not defamatory, but such written statement need not be incorporated in the transcript of hearings. All questions as to qualification of documents, relevancy of material contained therein, and claim of legal right including the relevancy of submitted written questions shall be finally determined by the Attorney General.

4. *Transcript of Testimony.*

An accurate stenographic record shall be kept of the testimony of all witnesses in both executive and public hearings. Final determination as to publication of all or part of the testimony given in executive session shall be made pursuant to the authority of chapter 307 by the Attorney General.

Copies of transcripts of public hearings or of transcripts publicly released in lieu thereof shall be available for purchase from the stenographer reporting to same by any person. Witnesses (and counsel) shall have the right to inspect the complete

transcript of their own testimony given in executive session but are required to keep such testimony confidential until and unless it is later made public by the Attorney General.

5. *Rules of Evidence.*

Being a fact-finding investigation in aid of the legislative process, judicial rules of evidence will not apply. As far as possible, all evidence shall be relevant and limited to testimony of facts within the knowledge of the witness. Relevancy, pertinency of questions, and admissibility of evidence, shall be determined by the Attorney General.

6. *Reports Derogatory to Individuals.*

Publication of reports, statements, testimony or findings based thereon, shall not be issued unless found by the Attorney General to be substantially within the purpose of chapter 307 and based upon evidence presented at hearings and under oath.

7. *Television and Radio.*

In the event of request to televise or broadcast a public hearing, witnesses summoned to appear and testify thereat shall be notified of such request in writing by the Attorney General not less than twenty-four hours prior to the date set for hearing. Witnesses requesting that their testimony not be televised or broadcast shall have their request granted, provided the request is made not less than twelve hours prior to the date and hour of the hearing.

8. *Service of Subpoena.*

So far as possible, all witnesses summoned to testify either in executive session or at public hearings shall be furnished a copy of these RULES OF PROCEDURE at the time service of subpoena is made.

9. *Public Hearing.*

To protect citizens of the state from irresponsible charges, witnesses are directed to mention the name of no persons in a public hearing until all information concerning those persons in the possession of the witness has been furnished in executive session.

LOUIS C. WYMAN
Attorney General